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STATEMENT

On Wednesday 2 November 2016, a report entitled 'State of Capture' prepared by the former Public Protector, Advocate Thuli Madonsela, was released.

The report did not make any findings. Instead it made what were termed "observations", based, (the report acknowledged), on an investigation not completed. It deferred a proper investigation to a commission of inquiry to be established at a future date. The outgoing Public Protector has directed the President – in whom the Constitution vests the power to appoint commissions of inquiry - to appoint one, and further directed the Chief Justice to designate a particular judge to head it.

It is a matter for regret that the report was prepared in haste to meet a deadline related to the Public Protector's own departure from office. That her office continues, as all State offices do, and that any uncompleted function is completed by a successor in that office, was not a consideration in the report.

"Observations" made in the report relating to, inter alia, my conduct, are in material respects inaccurate, based on part-facts or simply unfounded. What the previous Public Protector has done is not herself to investigate to completion, or to allow her office to complete what she initiated too late to complete herself. She has also determined on recording "observations" without, in crucial respects, putting intended harmful disclosures to me first – as she was by law required to do. She has effectively deferred my constitutional right to be heard to a future date, and to a further body, which she has ordered others to assemble.

If such a body is indeed by law to be assembled, and carry out the task, it will not be for some time – as recent experience indicates.

In the meanwhile harm is done – to the institution it has been my honour to lead in the most difficult times, to its reputation and to my own. I say nothing of the harm, too, to others close to me.

I am confident that, when the time comes, I will be able to show that I have done nothing wrong and that my name will be cleared. I shall dedicate myself to showing that an injustice has been done by the precipitate delivery of 'observations', following an incomplete

4

investigation, which the former Public Protector has drawn back from calling 'findings'. The truth will out.

I have, in the interests of good corporate governance, decided to leave my employ at Eskom from 1 January 2017. I do so voluntarily: indeed, I wish to pay tribute to the unfailing support I have had since I took up office from the chairman, the Board and with those with whom it has been my privilege to work. Together we brought Eskom back from the brink.

I will take time off to reflect before I decide on my next career move.

I wish to reiterate that this act is not an admission of wrongdoing on my part. It is rather what I feel to be the correct thing to do in the interests of the company and good corporate governance.

I wish to thank the shareholder representative, Ms Lynn Brown, the board, the executive team and all Eskom employees for their hard work and guidance in steering the company out of very difficult times during the twenty months that I was privileged to be the Group Chief Executive.

I go now, because it is in the interests of Eskom and the public it serves, that I do so.

Brian MOLEFE
11 November 2016

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN JOHANNESBURG)

CASE NO: J 1276/17

In the matter between:

BRIAN MOLEFE

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

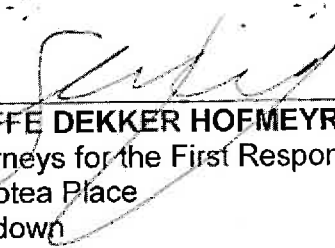
Second Respondent

FILING SHEET: FIRST RESPONDENT'S AFFIDAVIT

PRESENTED FOR SERVICE AND FILING: First Respondent's Affidavit

DATED at SANDTON on this the 15th day of JUNE 2017





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SERVICE BY EMAIL

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN JOHANNESBURG)**

CASE NO: J 1276/17

In the matter between:

BRIAN MOLEFE

Applicant

And

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

FIRST RESPONDENT'S AFFIDAVIT

I, the undersigned,

ZETHEMBE KHOZA

do hereby make oath and state that:

1. I am the interim chairperson of the Board of Directors of Eskom Holdings SOC Limited ("Eskom"). I was so appointed on 12 June 2017.


J. Ask.

- 2 -

2. Save where otherwise stated, or where the converse appears from the context, all the fact stated herein are within my personal knowledge and are true and correct.
3. I am duly authorised to depose to this affidavit on behalf of Eskom.
4. Eskom abides the decision of this Court in respect of the merits of the application, however, opposes the costs order sought by the applicant against Eskom.

THE PURPOSE OF THIS AFFIDAVIT

5. The purpose of this affidavit is two-fold:
 - 5.1. First, Eskom seeks to place facts before this Court explaining the basis upon which it terminated the applicant's ("Molefe") employment with it.
 - 5.2. Second, Eskom sets out the reason that it should not be ordered to pay for the costs of Molefe if Molefe is successful in this application.

 Eskom.

- 3 -

6. Consequently, this affidavit does not purport to respond to the merits of Molefe's application or Eskom's decision to remove him as its Group Chief Executive ("GCE").

BASIS UPON WHICH MOLEFE'S EMPLOYMENT WAS TERMINATED

7. During May 2017, the Democratic Alliance ("the DA") and the Economic Freedom Fighter ("the EFF") issued two separate urgent applications out of the Gauteng High Court for relief which in effect prohibits Molefe from resuming his duties as Eskom GCE in accordance with the Reinstatement Agreement concluded between Molefe and Eskom.
8. The Reinstatement Agreement is attached to Molefe's founding affidavit as "BM18" and the DA and EFF applications are attached as "BM2a" and "BM2b" respectively.
9. Mr Baldwin Siphon Ngubane ("Ben"), the previous chairperson of Eskom, in his capacity as the chairperson of Eskom's Board, deposed to an answering affidavit to both the DA and EFF applications, where

J. Ash.

- 4 -

he set out in detail, the chronology and circumstances relating to, *inter alia*, Molefe's:

- 9.1. Appointment as Eskom's GCE;
 - 9.2. Departure from Eskom on 31 December 2016; and
 - 9.3. Resumption of duties at Eskom on 15 May 2017.
10. A copy of Eskom's answering affidavit in the High Court proceedings is annexed hereto as "EN1". I am aware of the facts giving rise to that affidavit and confirm its contents.
11. Eskom's answering affidavit sets out the following, in summary:
- 11.1. Molefe was employed as Eskom GCE with effect from 1 October 2015, in terms of a five-year fixed term contract due to expire on 30 September 2020.
 - 11.2. On 9 February 2016, the Eskom Board's People & Governance Committee ("the Committee"), resolved, that in respect of retirement benefits relating to Executives appointed on fixed-term contracts, the following would apply:

J. Molefe

- 5 -

"1. The current Eskom Pension and Provident Fund (EPPF) rule that employees may proceed on retirement from age fifty with ten years' service remains applicable.

2. In cases where Executive Directors (appointed on fixed-term contracts) decide to take early retirement and there is a shortfall regarding the EPPF ten years' service rule, Eskom shall –

(i) bridge the gap to make up the ten years;

(ii) waive penalties applicable to early retirement;

(iii) refund EPPF actual costs for additional services added, plus penalties applicable to early retirement."

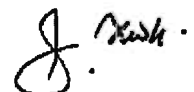
11.3. During the latter part of 2016, the Public Protector published the State of Capture Report. The Public Protector's Report made various observations in respect of several persons, including Molefe.

11.4. The Public Protector's Report, including the mention of Molefe therein, received significant media attention.

J. Nkomo

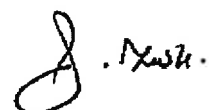
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- 11.5. On 11 November 2016, Molefe wrote to Ben, in his capacity as the previous chairperson of Eskom's Board, requesting approval for early retirement in terms of the Rules of the Eskom Pension and Provident Fund ("the Fund") read in conjunction with the resolution of the Committee of 9 February 2016.
- 11.6. On 24 November 2016, Ben addressed a letter to Molefe, in terms of which he conveyed the Eskom Board's acceptance of his request for early retirement. Copies of Molefe's letter dated 11 November 2016 and Ben's letter of 24 November 2016 are attached Molefe's to the founding affidavit as annexures BM7 and BM8 respectively. The exchange of these correspondence is referred to as the "Early Retirement Agreement".
- 11.7. Molefe departed from the employ of Eskom on the basis of the Early Retirement Agreement. An amount of approximately R30 million was paid to the Fund for Molefe's benefit pursuant to the Early Retirement Agreement.



- 7 -

- 11.8. During April 2017, the Minister of Public Enterprises (“the Minister”) issued a press statement indicating that she did not approve the pension pay-out to Molefe.
- 11.9. Upon taking legal advice, Eskom realised that Molefe’s early retirement and Eskom’s acceptance thereof was based on the common mistake that Molefe was eligible for early retirement at the age of 50, whereas the Fund rules only permitted for his retirement from the age of 55. Accordingly, the Early Retirement Agreement fell to be set aside and the performance by both parties had to be restored. Quite simply, Eskom was entitled to a refund of the money that it paid to the Fund for the benefit of Molefe and Molefe was entitled to be restored to his position as GCE.
- 11.10. Eskom, consequently resolved to rescind its purported approval of Molefe’s request for early retirement and concluded the Reinstatement Agreement, which provided for Molefe’s employment contract to continue in accordance with its terms and for Molefe to resume his duties as GCE in terms of his employment contract.



- 8 -

12. Molefe's resumption of his duties as GCE of Eskom is the subject of the High Court proceedings brought by the DA and the EFF.
13. On 31 May 2017, the Minister, addressed a letter to Ben in his capacity as the chairperson of the Eskom Board. The letter from the Minister is attached to Molefe's founding affidavit as annexure "BM23".
14. The subject of the Minister's letter is "*Directive to rescind the decision to re-instate Mr Brian Molefe as Group Chief Executive*". The relevant part of the Minister's letter states the following:

"Following my engagements with Government through the Inter-Ministerial Committee and filing of respective affidavits, I have come to the conclusion that the appropriate process was not followed in the appointment of Mr Molefe. I therefore direct the Board to rescind its decision to reinstate Mr Molefe as the Group Chief Executive of Eskom.

..."

[underlining inserted]

 Mark.

- 9 -

15. The Board considered the Minister's directive and passed a resolution on 2 June 2017 to give effect thereto. A copy of this resolution appears as annexure "BN2". The resolution reads as follows:

"In giving effect to and on the basis of the Minister's directive contained in the letter dated 31 May 2017, it is resolved:

1 *That the resolution of the Board of Directors taken on 2 May 2017 is rescinded.*

2 *That the Reinstatement Agreement concluded between Mr Molefe and Eskom on 11 May 2017 be rescinded."*

16. On 2 June 2017, Ben addressed a letter to Molefe rescinding the Reinstatement Agreement, a copy of which is attached hereto as "BN3". The relevant portion of that letter reads as follows:

"In giving effect to the directive of the Minister of Public Enterprises, the Board has resolved to rescind the Reinstatement Agreement concluded between you and Eskom on 11 May 2017, as a consequence of which, you are effective immediately no longer the Group Chief Executive of Eskom"

J. Mash.

OPPOSITION OF COSTS ORDER AGAINST ESKOM

17. I respectfully submit that this is not a case in which Eskom should be ordered to pay the costs of Molefe in the event of him being successful in his application before this Court.
18. The Eskom Board received a directive from the Minister which, in the circumstances, it was required to give effect to. In any event, the Eskom Board did not want to be embroiled in a dispute, as between it and the Minister, as to whether the resumption of Molefe as Eskom's GCE was legally valid. The Board held the view that it would not be in Eskom's best interest to be embroiled in a dispute regarding the position of the GCE, as that would only serve to distract Eskom from fulfilling its management and significant daily operational functions.
19. The Eskom Board thought it necessary, instead, to direct its mind, resources and energy towards the efficient operation of Eskom.
20. For these reasons, Eskom decided to give effect to the Minister's directive on the basis that, should Eskom be challenged in giving effect to the Minister's directive, the Minister would be required to defend the legal validity thereof.

J. Moko.

- 11 -

21. It is on this basis that, save for opposing the costs order sought by Molefe against Eskom, Eskom abides the decision of this Court.

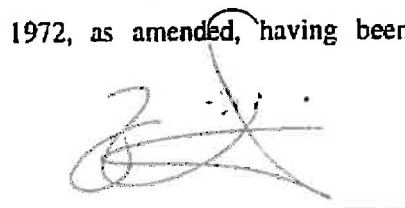
WHEREFORE, Eskom abides the decision of this Court and asks that in the circumstances set out above, that no order as to costs be made against Eskom.



Deponent

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct.

This affidavit was signed and sworn to before me at Umlanga on this 15th day of JUNE 2017 and the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS

CHANELLE PIETERS
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
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"BN133"
"BNI"

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 33051/17

In the matter between --

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF PUBLIC ENTERPRISES

First Respondent

ESKOM HOLDINGS SOC LIMITED

Second Respondent

BRIAN MOLEFE

Third Respondent

AND

CASE NUMBER: 34588/2017

In the matter between -

ECONOMIC FREEDOM FIGHTERS

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

BRIAN MOLEFE

Third Respondent

NATIONAL UNION OF MINeworkERS

Fourth Respondent


FILING SHEET: ANSWERING AFFIDAVIT

KINDLY TAKE NOTICE that Eskom Holdings SOC Limited (Second Respondent under case number 33051/17; First Respondent under case number 34588/2017) hereby presents for filing its answering affidavit.

E. Nkomo

DATED at SANDTON on this the 22nd day of MAY 2017

CDH
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TO:
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SERVICE BY HAND AND EMAIL

J. Mak.

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 33051/17

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF PUBLIC ENTERPRISES

First Respondent

ESKOM HOLDINGS SOC LIMITED

Second Respondent

BRIAN MOLEFE

Third Respondent

AND

In the matter between:

CASE NO: 34568/17

ECONOMIC FREEDOM FIGHTERS

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

BRIAN MOLEFE

Third Respondent

NATIONAL UNION OF MINeworkERS

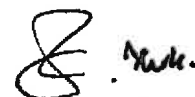
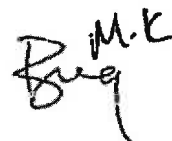
Fourth Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

BALDWIN SIPHO NGUBANE

do hereby make oath and state that:



- 2 -

- 2 I am the chairperson of the Board of Directors of Eskom Holdings SOC Limited ("*Eskom*").

2. Save where otherwise stated, or where the converse appears from the context, all the facts stated herein are within my personal knowledge and are true and correct.

2. I am duly authorised to depose to this answering affidavit in opposition to both the applications referred to above.

2. This is an answering affidavit prepared in opposition to the relief sought in Part A of the application brought by the Democratic Alliance ("*the DA*") under case number 33051/17 and the relief sought in Part A of the application brought under case number 34568/17 by the Economic Freedom Fighters ("*the EFF*"). In both applications, urgent interim relief is sought pending the outcome of the relief sought in Part B of each of the applications.

- (I depose to a single answering affidavit for a number of reasons -

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- 5.1. First, the EFF has indicated, so I am advised, that it will seek to have its application for urgent interim relief heard together with the DA's application for urgent interim relief.
- 5.2. Second, in relation to the circumstances relevant to both applications, they substantially overlap in facts. Consequently, from Eskom's point of view, it is appropriate that the relevant factual setting be dealt with in a single affidavit, thereby avoiding repetition.
- 5.3. Third, whilst there are differences in the form in which the DA and the EFF couched the relief which they seek, in substance both applications are directed towards interdicting preventing Brian Molefe ("*Molefe*") from fulfilling his duties and responsibilities as the CEO of Eskom. In whichever way the relief is couched, the substantive issue remains the same.
3. The DA's application was served on 15 May 2017. The EFF's application was served late on 19 May 2017. Eskom opposes the interim relief sought in both applications. In due course, Eskom will

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- 4 -

also file papers in opposition to the relief sought in part B of each of the applications.

7. Having regard to the central issue of substance in both the applications, I shall first deal with the chronology of events relevant to Molefe's tenure as CEO of Eskom. I shall thereafter deal with the founding affidavits in each of the DA's and the EFF's applications.

**THE CHRONOLOGY RELEVANT TO MOLEFE'S TENURE AS
ESKOM'S CEO**

7. Molefe was appointed as Eskom's CEO with effect from 1 October 2015.
7. On 16 October 2015, I, in my capacity as Chairperson of Eskom, addressed a letter to the Minister of Public Enterprises (*"the Minister"*) setting out Eskom's proposal for Molefe's remuneration package for the Minister's consideration. I, copy of my letter is annexure **ESK1** hereto.
10. The Minister responded in a letter dated 1 November 2015, a copy of which is annexure **ESK2** hereto. As appears therefrom, the Minister

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approved the total guaranteed remuneration proposed for Molefe, with effect from the date of his appointment as CEO of Eskom. The Minister further advised that Cabinet had noted Molefe's appointment, subject to the period of employment being confirmed. The Minister expressed her view (which was also, so she stated, Cabinet's view) that "... *the period of employment be stipulated as five years, subject to annual performance reviews*"). The Minister then stated that she awaited receipt of the "*draft employment contract and performance agreement*".

11. On 9 November 2015, I in my capacity as chairperson of the Eskom Board, addressed a letter to Molefe, confirming his appointment as Group Chief Executive Officer. A copy of the letter is annexure ESK3 hereto. Amongst the issues dealt with in the letter were deductions relating to the Eskom Pension and Provident Fund ("*the Pension Fund*"). Molefe signed the letter on 11 November 2015.
12. In the preparation of an employment contract for Molefe, an issue which had arisen related as Molefe's retirement benefits. The specific issue in this regard was communicated to the Minister in a letter which

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- 6 -

I addressed on 25 November 2015, a copy of which is annexure ESK4 hereto. The issue and the related proposal was set out as follows:

"It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr Molefe has served in numerous high-ranking South African organisations at executive level, essentially to stabilise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short-term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To bridge this gap, the following contractual stipulations are proposed:

- *Regardless of Mr Molefe's age after the 5-year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.*
- *That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.*
- *That Eskom carries the cost of such penalties (to be paid over to the EPPF).*
- *In the event that Mr Molefe's contract is not extended beyond the 5-year termination date, he will not be allowed to subscribe to any other SOC or government pension fund.*
- *Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.*

I trust that this will receive the Minister's favourable approval."

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- 7 -

13. On 9 February 2016, a meeting of the Board People & Governance Committee: In-Committee was held (*"the Committee"*). A copy of the relevant extract of the minutes of that meeting is annexure ESK5 hereto. This is the Committee which historically has and still does deal with and implements the issues reflected on the minutes.
14. Paragraph 7.5 of annexure ESK5 refers to and notes the discussion relating to the conclusion of Molefe's employment contract, with particular reference to the issue relating to retirement benefits, and in particular "... the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund Rules. This was followed by a request for "... *the Eskom Rules to be amended in respect of executive directors with fixed-term contracts to make up the shortfall in years, waive the penalties and refund the Pension and Provident Fund the actual costs relating to the additional service*".
15. Following on this discussion, it was resolved:
- "1. *The current Eskom Pension and Provident Fund (EPPF) rule that employees may proceed on retirement from age fifty with ten years' service remains applicable.*

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Greg
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- 8 -

2. *In cases where Executives Director's (appointed on fixed-term contracts) decide to take early retirement and there is a shortfall regarding the EPPF ten years' service rule, Eskom shall –*
- (i) bridge the gap to make up for the ten years;*
 - (ii) waive penalties applicable to early retirement;*
 - (iii) refund EPPF actual costs for additional services added, plus penalties applicable to early retirement."*
16. A signed copy of the relevant resolution is annexure **ESK6** hereto.
17. Paragraph 1 of the resolution makes reference to an EPPF rule. In fact the reference should have been to the Pension Fund's "*Member's Guide to Benefits*", a copy of which is ESK7 hereto. In particular, the relevant provision is in 3.3(d). This "*Member's Guide*" is published by the Pension Fund and has always been used as the point of reference by the Committee.
18. Subsequently, and against the background of the resolution reflected in annexure **ESK6**, Eskom and Molefe concluded his employment contract, a copy of which is annexure **ESK8** hereto ("*the employment contract*"). The employment contract was concluded on 15 March 2016.
19. The employment contract –

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- 19.1. records that Molefe had commenced employment with Eskom on 1 October 2015, and with effect from that date Eskom appointed him as its Group Chief Executive;
- 19.2. was a fixed-term contract expiring on 30 September 2020;
- 19.3. gave either party the entitlement to terminate the employment relationship by giving the other not less than six months' written notice, provided that Eskom was entitled to terminate the employment contract with or without notice, or on such other basis as it considered appropriate for any reason justified in law.
- 19.4. provided for Molefe to continue as a member of the Pension Fund subject to its Rules.
20. Since his appointment as Group Chief Executive of Eskom, Molefe has fulfilled his responsibilities with efficiency and also in a manner which brought stability to Eskom in difficult circumstances. During his tenure, Eskom was able to successfully deal with significant issues relating to procurement and also achieved stabilisation of the electricity grid, thereby initially reducing the problem of load-

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- 10 -

shedding and eventually avoiding the load-shedding. The circumstances in which Molefe took over as Group Chief Executive were difficult. Molefe though confronted these difficulties with vigour and was substantially responsible for assisting in restoring stability to the functioning of Eskom, particularly in its most significant function, namely to ensure the continued uninterrupted supply of electricity to South Africans.

21. However, during the latter part of 2016, the Public Protector published her report, extracts of which are substantially relied upon by both the DA and the EFF in their applications. The content of the Public Protector's report substantially forms the basis for the attack by both the EFF and the DA on the suitability of Molefe to be the Eskom Group's Chief Executive and the appropriateness of him continuing in that position. I will not deal with the content of the Public Protector's report and what is stated therein in this regard, for a number of significant reasons –

- 21.1. First, the remedial action proposed by the Public Protector in her report is the establishment of a commission of enquiry for the very purpose of enquiring into, investigating and receiving



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evidence on the many allegations which are referred to in her report.

- 21.2. Second, other than for the remedial action relating to the appointment of a commission of enquiry, the report itself refers to many allegations made against numerous parties, including Molefe, and to observations made by the Public Protector.
- 21.3. Third, there are no findings made by the Public Protector against Molefe nor was there any remedial action proposed by her in relation to Molefe.
- 21.4. Consequently, and in relation to Molefe, from Eskom's perspective the status of the Public Protector's report was precisely what was said therein. There were numerous allegations and observations. However, the Public Protector herself had identified the need for an independent commission of enquiry, which would be tasked with investigating the allegations made against, *inter alia*, Molefe and considering observations made by the Public Protector.

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- 12 -

22. In these circumstances, it would have been entirely inappropriate of Eskom to act against Molefe on the basis that the as yet untested allegations were actually proven.
23. From Eskom's perspective, and in light of the performance of Molefe as Group Chief Executive, there was at the time no need to take any steps against Molefe.
24. At the time though, the issue had attracted significant comment, with views being expressed both against and in favour of Molefe. The adverse criticism of Molefe appeared to have been founded upon the Public Protector's report without regard to what was stated therein, namely that the report reflected allegations made against Molefe and observations of the Public Protector without any findings being made against Molefe and no remedial action proposed against Molefe. This was a task which the Public Protector, through remedial action, had assigned to a commission of enquiry.
25. The Commission of enquiry has not yet been appointed, but this is a matter which can hardly be dealt with either by Eskom or Molefe. I am advised that the President of the Republic of South Africa has



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- 13 -

instituted review proceedings in this Honourable Court under case number 91139/16 in relation to the Public Protector's report. In addition, I understand that the DA has also instituted proceedings in this Honourable Court under case number 21029/17, also relating to the Public Protector's report. Eskom is not a party to either case, nor to the best of my knowledge, is Molefe.

26. From my personal engagements with Molefe, I sensed that Molefe felt the burden of being judged on the basis of allegations which were untested and not proven. He wanted nothing more than to be given a fair opportunity to challenge each and every one of the allegations of impropriety made against him. He has thus far not been given that opportunity, yet the premise of both the DA application and the EFF application is that he be treated on the basis that the allegations against him are proven.

27. I have no doubt that it was as a result of the pressure which Molefe felt through the unfortunate swirl of criticism around him that he, on 11 November 2016, addressed a letter to me as chairperson of the Eskom Board of Directors. A copy of that letter is annexure **ESKO** hereto. The letter and what follows from the letter is significant to an

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- 14 -

understanding of the facts relevant to the present applications. Molefe did not resign from his post as Eskom's Group Chief Executive.

28. Annexure ESK9 states the following:

"I hereby request for approval for early retirement in terms of the Rules of the Eskom Pension Fund read in conjunction with the resolution of the People and Governance Subcommittee of the Board dated 9 February 2016.

My last day of service will be 31 December 2016.

..."

29. There are two important features of annexure ESK9 -

29.1. First, Molefe's request was for "early retirement";

29.2. Second, the request was premised upon the Rules of the Pension Fund read in conjunction with the resolution reflected on annexure ESK6 (which provides for retirement from age 50 with provision for Eskom bridging the gap to make up for the shortfall regarding the 10-year service rule and the waiver of penalties applicable to early retirement).

30. On 24 November 2016, I addressed a letter to Molefe, a copy of which is annexure ESK10 hereto.

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- 15 -

31. Annexure **ESK10** hereto is the communication of the acceptance, by the Eskom Board, of Molefe's request for early retirement. However, and erroneously, the provision in **ESK10** dealing with the retirement benefits in terms of the Pension Fund Rules, incorrectly refer to the rules relating to retrenchment as opposed to early retirement. Rules 28 and 21.4 were erroneously referred to. The acceptance of Molefe's "*request for approval for early retirement*" was not dealt with in accordance with the terms of that request, namely that it be in terms of the Pension Fund Rules read together with the resolution reflected in annexure **ESK6**. In other words, the terms of the "*approval*" did not coincide with the terms of the "*request*". Furthermore, Eskom was mistaken in its belief that it could permit for early retirement prior to the age of 55.
32. The purported early retirement agreement, concluded as set out above, was then given effect to. Eskom made payment of just over R30 million to the Pension Fund.
33. Molefe then departed from Eskom (on the basis of his retirement proposal) and subsequently became a Member of Parliament for the African National Congress.



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34. The matter then reared its head when the Minister, on the 23rd April 2017 and following on certain press reports, issued a press statement, a copy of which is Annexure **ESK11** hereto. In order to deal with the issue, the Eskom Board met on 24 April 2017. This was followed by my meeting the Minister on 25 April 2017. We discussed the implications of the early retirement agreement. The Eskom Board thereafter met again and, having considered legal advice received, concluded that the early retirement agreement had legal impediments to its implementation and therefore had to be rescinded and the status quo restored.
35. The "agreement" concluded between Eskom and Molefe relating to his "retirement" was concluded in good faith, but on terms which, insofar as it related to pension benefits, could not be implemented. Molefe's request for early retirement was intricately linked to the pension benefit terms flowing therefrom. His request was a unitary request which could not be separated out between "retirement" and the benefits flowing therefrom.
36. Eskom was left in a difficult position because the payment of the amounts referred to above to Molefe and to the Pension Fund were

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- 17 -

made pursuant to a "*retirement*" but the Rules of the Pension Fund did not permit for early retirement at the age of 50. Early retirement could only be taken at the age of 55. Eskom, mistakenly, had acted on the basis of the resolution set out in annexure ESK6 hereto. Eskom's mistaken belief was, *inter alia*, that the resolution (ESK6) could have been passed and implemented on its terms. But the Pension Fund rules do not permit for "*retirement from age 50*".

37. When it became clear to Eskom, on the basis of legal advice received, that it was wrong in this regard and that its agreement with Molefe for his retirement was concluded on a legal premise which was incorrect, Eskom was left with the task of undoing what had been done. Consequently, Eskom passed a resolution to rescind its decision to approve Molefe's request for retirement. The consequence thereof was that the status quo had to be restored. The amounts paid out by Eskom on account of Molefe's "*retirement*" would have to be repaid to Eskom and, in order to restore the status quo, Molefe would resume his duties as the Eskom Chief Executive.
38. Consequently, on 3 May 2017, I addressed a letter to Molefe, in these terms, a copy of which is annexure ESK12 hereto. The minute of the

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- 18 -

Special Eskom Board meeting dealing with the issue is annexure **ESK13** hereto.

39. In consequence of the resolution to rescind the purported approval of the early retirement request, Molefe and Eskom concluded a reinstatement agreement, a copy of which is annexure **ESK14** hereto ("*the reinstatement agreement*"). The reinstatement agreement provided for Molefe's employment contract to continue on its terms and for Molefe to resume his duties in terms of his employment contract. Molefe also agreed to repay amounts received by him pursuant to his purported "*early retirement*". The parties also agreed that the period between 1 January 2017 and 15 May 2017 (i.e. the date of his purported early retirement and the date of his resumption of his duties), be treated as unpaid leave.
40. Molefe's acceptance of the terms of the retirement agreement is confirmed by the signature to a letter dated 11 May 2017, a copy of which is annexure is **ESK15** hereto.
41. In summary, I make the following points –

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- 41.1. Molefe did not resign from Eskom. His departure was on account of a purported "*early retirement*", on terms though which could not be effected in law.
- 41.2. Consequently, the purported early retirement could not be given effect to and was for that reason rescinded by Eskom. The consequence of this was that the status quo as it existed prior to the purported conclusion of the early retirement agreement had to be restored. Molefe has agreed to repay all amounts which he received from the Pension Fund, and the Pension Fund will repay to Eskom all amounts paid by Eskom to the Pension Fund in relation to Molefe's purported "*early retirement*".
- 41.3. Prior to Molefe's purported early retirement, Eskom did not consider it appropriate to remove Molefe from his position as Group Chief Executive. In this regard, Eskom's Board was mindful of the terms of the Public Protector's report, which contained allegations made by various people and observations by the Public Protector, but with the only remedial action (which in form is significant) being that those

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allegations and observations be tested by a duly appointed commission of enquiry.

- 41.4. The Eskom Board is also mindful of the fact that as Group Chief Executive, Molefe had played a significant role in stabilising Eskom. His performance in this regard could not be faulted.
42. It is also significant, in both the DA application and the EFF application, that there are assumptions made and arguments based on a premise which are either incorrect or ill-founded -
- 42.1. Thus, a fundamental premise of the DA application is that Molefe had resigned as Group Chief Executive of Eskom and was thereafter again appointed or reinstated to that position by the Minister. Molefe did not resign. And, there was no decision made by the Minister to reinstate or appoint Molefe again. Molefe resumed his duties as Group Chief Executive on account of the failure of the purported early retirement agreement.



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- 42.2. Both the DA and the EFF significantly found their cases on the strength of the Public Protector's report. However, they fail to take into account that every reference they make to the Public Protector's report in relation to Molefe is a reference either to allegations made against Molefe or observations made by the Public Protector. The key aspect of the Public Protector's report, and the only aspect which constitutes the remedial action proposed by the Public Protector, is that a commission of enquiry be appointed to investigate the many allegations made in the Public Protector's report.
- 42.3. Thus, both the EFF and the DA would have this Court make an order which would prevent Molefe from fulfilling his duties as Group Chief Executive of Eskom and would prevent Eskom from benefitting from Molefe's role as such in circumstances where the allegations against Molefe have not been tested. This is akin to an adverse sanction against a person without that person having had the benefit of defending himself (as would be the case of a commission of enquiry as proposed by the Public Protector in her report).



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- 22 -

43. Against this background, I now deal with the founding affidavits in both applications. I might add though that, in doing so, I will not repeat the sequence of events as set out above.

AD RESPONSE TO THE DA'S FOUNDING AFFIDAVIT OF JAMES SELFE

44. **AD PARAGRAPHS 1 AND 2**

These allegations are not disputed.

45. **AD PARAGRAPH 3**

I deny that the facts contained in the founding affidavit are within the deponent's personal knowledge or that they are all true and correct.

46. **AD PARAGRAPH 4**

I note these allegations.

47. **AD PARAGRAPHS 5 - 8**

- 47.1. The identity and designation of the parties are admitted.



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47.2. However, the allegations made in the last sentence of paragraphs 6 and the second sentence of paragraph 8 are denied.

48. **AD PARAGRAPHS 9 AND 10**

48.1. For reasons set out above, Eskom denies that the DA is entitled to the relief that it seeks in Part A of its application. Eskom will in due course file a supplementary answering affidavit dealing more specifically with Part B of the application.

48.2. It is important to note though that the relief sought in prayer 2 of Part A of the application hinges upon the relief sought in prayers 2 and 3 of Part B. However.

48.2.1. the contention by the DA that the Minister had taken a decision to "*appoint and/or reinstate*" Molefe to the position of Group Chief Executive is factually incorrect. The Minister took no such decision. The facts are as set out above.

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- 24 -

48.2.2. Molefe has already undertaken to repay amounts received by him pursuant to the failed early retirement agreement between him and Eskom, and he is performing in terms of that agreement.

48.3. Consequently, interim relief is sought in respect of an application where the factual premise is on the one part incorrect and on the other part moot.

49. **AD PARAGRAPH 11**

49.1. Molefe is the Group Chief Executive at Eskom.

49.2. Molefe did not resign from his position as Group Chief Executive at Eskom.

49.3. In relation to the Public Protector's report, allegations were made against Molefe. There were though no findings made against him nor was there any remedial action proposed by the Public Protector in relation to Molefe.



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50. AD PARAGRAPHS 12 -14

50.1. I deny the allegations herein contained. They are factually incorrect.

50.2. In this regard I refer to the chronology of events set out above in which the true position is set out.

51. AD PARAGRAPHS 16 - 18

51.1. The allegations made herein form the substantive basis upon which the DA has brought its application.

51.2. They rely entirely on the content of the Public Protector's report of 2 November 2016.

51.3. Significantly though, they do not fairly present the essence of the report, which is that the report records allegations made about Molefe on substantive issues. It is not my intention to deal with these allegations.

51.4. However, it is important to note that the only remedial action proposed by the Public Protector in her report was that a

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- 26 -

commission of enquiry be appointed in order to investigate these allegations.

51.5. In the approach it has adopted, the DA has in essence sought to elevate a report referring to allegations made against Molefe into findings made against Molefe. This is palpably unjustified.

51.6. Save as aforesaid, these allegations are denied.

52. **AD PARAGRAPHS 19 AND 20**

52.1. The press statements released by Molefe and Eskom are annexures ESK16 and ESK17 hereto respectively.

52.2. The factual content in which those statements were released are set out earlier herein. They were on the basis of an application on specified terms for early retirement made by Molefe and an acceptance thereof which was neither in terms of the request made by Molefe nor in terms permitted by the Rules of the Pension Fund. It is in consequence thereof that

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- 27 -

Eskom has rescinded its decision and the status quo has been restored.

53. **AD PARAGRAPH 21**

I do not comment on the statement published by the Minister save to deny that Molefe had resigned from his post as Eskom Group Chief Executive.

54. **AD PARAGRAPH 2**

54.1. I note these allegations.

54.2. I do not know whether the DA has actually laid criminal charges against Molefe. In any event, what is significant is that the approach adopted by the DA in the present application equates to seeking relief against Eskom and Molefe as if Molefe has been convicted of the allegations made against him.



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- 28 -

55. AD PARAGRAPH 23

The appointment of an acting group executive for Eskom was made in the context of the belief that Molefe had lawfully gone on early retirement.

56. AD PARAGRAPH 24

56.1. The allegations herein contained are not all correct.

56.2. In this regard, I refer to what I have stated earlier herein.
Molefe did not resign his post.

56.3. It is true that there were serious allegations made against Molefe in the Public Protector's report. However, the most significant aspect of that report was the remedial action which was proposed by the Public Protector, namely a commission of enquiry appointed to investigate the allegations.

56.4. The DA wants this Court to treat those allegations as if they have been proven and to adversely sanction Eskom and Molefe on that basis.



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- 29 -

57. AD PARAGRAPHS 25 AND 26

57.1. Eskom did advertise the position of Group Chief Executive. This was done in the context of the belief that Molefe could take early retirement on the basis which had been requested by him. This turned out not to be the case and consequently the purported early retirement was rescinded and the status quo restored.

57.2. I will not comment on how press reports dealt with Molefe's "early retirement" or the amount of R30 million. I have set out the facts above.

58. AD PARAGRAPH 27

58.1. The DA did request a copy of Molefe's employment contract.

58.2. A copy thereof is an annexure to this application.



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- 30 -

59. AD PARAGRAPHS 28 AND 29

59.1. I admit that the Minister did not approve the terms of Molefe's "early retirement".

59.2. It was for that reason that the Board of Eskom had to consider the effect of the early retirement agreement between itself and Molefe.

59.3. Faced with the legal difficulty that the agreement could not be enforced and that the Minister did not approve the basis upon which Molefe's early retirement was approved, the Board rescinded that agreement and the status quo was restored.

60. AD PARAGRAPHS 30 AND 31

These allegations are admitted.

61. AD PARAGRAPHS 32 AND 33

61.1. Molefe has resumed his position as Eskom's Group Chief Executive because the early retirement agreement was rescinded for the reasons set out above.

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- 31 -

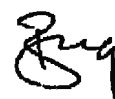
- 61.2. The status quo has therefore been restored.
- 61.3. The basis upon which this has occurred is a matter of law which was a result of an agreement having been concluded on an incorrect legal basis.
- 61.4. Save as aforesaid, the allegations herein contained are denied.

62. **AD PARAGRAPHS 34 - 41 : Urgency**

- 62.1. I deny that the application is urgent as contended for by the DA.
- 62.2. The case for urgency is substantially made on the basis that Molefe had resigned from Eskom, that if the matter is dealt with in the ordinary course Eskom and the public would suffer harm and further that the DA would be unable to obtain effective redress at a hearing in due course.
- 62.3. There is though a fallacy to the DA's approach -



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62.3.1. Molefe did not resign. The status quo has simply been restored, having regard to the invalidity of the agreement for his early retirement.

62.3.2. Whilst the DA makes statements such as the interests of good corporate governance and imminent and irreparable harm to Eskom and the public, it does not furnish any details on these conclusions it seeks to draw.

62.4. In short, the DA has not made out a case for urgency and consequently Eskom disputes urgency. In this regard, it is important to note that the relief sought by the DA has far-reaching consequences and there is no reason why Eskom ought not to have been given proper time to deal with the application, both in the preparation of its affidavit as well as in preparation for the argument.



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- 33 -

63. AD PARAGRAPHS 42 - 60

63.1. All of these allegations set out relevant statutory provisions and provisions from Eskom's MOI as well as the Rules of the Pension Fund.

63.2. These averments will be dealt with, to the extent required, during argument at the hearing of this application. Needless to say, these averments are admitted only insofar as they correctly set out the statutory provisions, the provisions from Eskom's MOI and the Rules of the Pension Fund.

64. AD PARAGRAPH 61 AND 62

For reasons set out above, these allegations are denied.

65. AD PARAGRAPH 63

65.1. The premise of the allegations herein contained is incorrect. Molefe resumed his duties at Eskom on account of the agreement relating to his early retirement having been rescinded because it could not be legally implemented.



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- 34 -

65.2. Consequently, there was no decision made by the Minister which resulted in Molefe resuming his duties.

66. **AD PARAGRAPHS 64 - 81**

66.1. I have already dealt with the allegations herein contained.

66.2. Consequently, to the extent that any of these allegations are inconsistent with what I have set out above, they are denied.

67. **AD PARAGRAPH 82**

I deny that the DA has set out the requirements for interim relief.

68. **AD PARAGRAPH 83**

68.1. I deny that the DA has established a *prima facie* right.

68.2. In this regard, its case is substantially founded upon Molefe having resigned and the Minister thereafter having taken a decision to employ Molefe or to reinstate him.

68.3. But, for reasons set out above, these assumptions by the DA are factually incorrect.



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- 35 -

69. AD PARAGRAPHS 84 - 94

- 69.1. The case which the DA attempts to make against Eskom in relation to the position of Molefe is based on labels such as good corporate governance, public interest and with reference to the Public Protector's report.
- 69.2. However, the DA does not demonstrate that the allegations made in the Public Protector's report are indeed correct. Nor does the DA pay any attention to the remedial action actually proposed by the Public Protector, namely the appointment of a commission of enquiry.
- 69.3. In relation to situations that there would be harm to Molefe or Eskom should Molefe continue acting as the Group Chief Executive, this is completely unfounded and not substantiated in any way by the DA. In this regard, the DA does not, with reference to Molefe's performance as Group Chief Executive, point to any single instance which might suggest that were Molefe to continue as the Group Chief Executive of Eskom, there would be harm done to Eskom or to the public.

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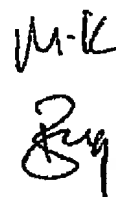
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- 36 -

- 69.4. Furthermore, the DA contends that Molefe should not be permitted to continue as Eskom's Group Chief Executive "while he is under investigation". But, Molefe is not under investigation. And, there is nothing in the Public Protector's report which suggests, as remedial action, that he be placed under investigation. What has been suggested is that all of the allegations (which go well beyond Molefe) recorded in the Public Protector's report be the subject matter of a commission of enquiry so that they could be fully dealt with. But, the DA has sought to take issue specifically with Molefe in this context. There is no suggestion by the DA that it has sought to take similar action against any of the other persons referred to in the Public Protector report against whom allegations have been made.
- 69.5. Save as aforesaid, the allegations herein contained are denied.



- 37 -

70. AD PARAGRAPHS 95 - 97

70.1. If interim interdictory relief is granted, Molefe will be prevented from performing his duties as Eskom Group Chief Executive.

70.2. Eskom similarly will be prohibited from the benefit of Molefe performing his duties in that capacity and will be placed in the unsatisfactory position of having to appoint an Acting Group Chief Executive for the period it will take for the matter to be finalised.

70.3. Again, beyond simply stating conclusions, the DA does not really deal with the balance probabilities.

71. AD PARAGRAPHS 98 AND 99

For reasons set out above, the factual foundation of these allegations is incorrect. They are accordingly denied.



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- 36 -

72 AD THE DA'S SUPPLEMENTARY AFFIDAVIT

72.1 In its supplementary affidavit the DA deals further with the Public Protector's report and then seeks to introduce what it terms as new facts but what is really hearsay reference to press comments allegedly attributed to former Minister Ramathloadi.

72.2 In relation to the Public Protector's report references, I refer to what I have already stated above.

72.3 In relation to the press reports which purport to reflect statements purportedly made by Mr Ramathloadi, not only is this hearsay, but it is also untested. Eskom cannot be expected to be drawn in court proceedings into replying to press reports on what Mr Ramathloadi is alleged to have said.

72.4 Accordingly, Eskom need not deal with the supplementary affidavit further. It goes without saying that any allegations therein which are in conflict with this affidavit, are denied.



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- 39 -

WHEREFORE Eskom prays for an order that part A of the DA's application be dismissed with costs.

AD THE EFF'S FOUNDING AFFIDAVIT

73. In Part A of the relief sought in its application, the EFF seeks an order suspending a board resolution of Eskom and interdicting Eskom from implementing that board resolution.
74. The relevant board resolution though was a board resolution by Eskom to rescind its decision to approve Molefe's request for early retirement on the terms as sought by Molefe. That resolution has already been implemented.
75. For reasons set out above the early retirement agreement cannot be given effect to. Consequently, the relief sought by the EFF in Part A of its application would result in the early retirement agreement becoming operative.
76. For this reason alone, the relief sought by the EFF should not be granted.
77. Prior to dealing with the allegations in the EFF founding affidavit *ad seriatim*, I emphasise again that I deal only with the application insofar as it relates to Part A of the relief sought. Eskom reserves the right to supplement this



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- 40 -

affidavit in order to deal with the relief sought in Part B which is of far-reaching effect.

78. AD PARAGRAPH 1

These allegations are admitted.

79. AD PARAGRAPH 2

I deny that the averments in the founding affidavit are true or that they are within the deponent's personal knowledge.

80. AD PARAGRAPH 3

80.1 I admit the citation of the EFF.

80.2 Save as aforesaid, I have no knowledge of the allegations and do not respond thereto.

81 AD PARAGRAPHS 4 & 5

These allegations are admitted.

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82 AD PARAGRAPH 6

82.1 I admit the citation of Molefe.

82.2 For reasons set out above, the remaining allegations herein contained are denied.

83 AD PARAGRAPH 7

I note these allegations.

84 AD PARAGRAPH 8

I do not place these allegations in issue.

85 AD PARAGRAPH 9

85.1 To the extent that the judgment of the Constitutional Court referred to herein is correctly quoted, I do not take issue with these allegations.

85.2 However, I deny that the passage quoted from the relevant Constitutional Court judgment is relevant to this application, or to the facts of this application.

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- 42 -

86 AD PARAGRAPHS 10 - 13

To the extent that the averments herein correctly quote what is stated in the Public Protector's report, they are admitted.

87 AD PARAGRAPH 14

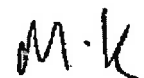
87.1 To the best of my knowledge, the President has not appointed a commission of enquiry.

87.2 I do not know the reasons for this, nor am I able to comment on the reaction from the Executive to the Public Protector's report.

87.3 However, as I understand it, both the President and the DA have instituted court proceedings in relation to the Public Protector's report.

88 AD PARAGRAPH 15 & 16

88.1 As stated above, the Public Protector's report made reference to allegations against Mr Molefe. No findings have been made against Molefe. The very purpose for the commission of enquiry as proposed by way of remedial action by the Public Protector is for those allegations to be tested. Until then, they remain allegations, and no more.



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- 43 -

88.2 Save as aforesaid, these allegations are denied.

89 **AD PARAGRAPH 17**

89.1 Eskom has not taken the Public Protector's report under judicial review.

89.2 Eskom did not do so because it welcomes the appointment of a commission of enquiry to consider the allegations contained in the Public Protector's report. In relation to those allegations and any observations made by the Public Protector in her report, those could not, so I am advised, in law be taken on review.

90 **AD PARAGRAPH 18**

90.1 These allegations are noted.

90.2 For reasons set out in this affidavit, I deny the EFF is entitled to the relief sought in part A of its application.



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- 44 -

91 AD PARAGRAPH 19

91.1 Reference is made in this paragraph to the suitability of both Molefe and members of Eskom's Board.

91.2 However, the relief sought, by way of urgency, relates only to Molefe.

91.3 Part B is not part of the urgent application and Eskom will deal with the averments in the founding affidavit in relation to Part B in due course. I, however, deny that members of the Eskom Board are not fit and proper persons.

92 AD PARAGRAPH 20

92.1 These allegations are denied.

92.2 The only remedial action proposed by the Public Protector is the appointment of a commission of enquiry. That commission of enquiry has been proposed precisely in order to fully deal with the many allegations referred to in the Public Protector's report.

92.3 It would be improper in the extreme to treat any person against whom allegations were made as recorded in the Public Protector's report as if



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- 45 -

those allegations had been proven. If that were the case, there would be no purpose for a commission of enquiry.

93 **AD PARAGRAPH 21 (and the paragraphs referred to as 13.1 - 13.6)**

93.1 Again, what has been extracted from the Public Protector's report are allegations made against various persons. Clearly, the allegations, if proven, would be extremely damaging.

93.2 However, the very point of the commission of enquiry is for such a body to independently enquire into the allegations and thereafter make findings in relation thereto. The EFF in effect seeks to elevate allegations into findings. Even the Public Protector did not do so.

94 **AD PARAGRAPHS 22 - 71**

94.1 The EFF has taken a series of allegations referred to in the Public Protector's report and attempts, through this application, to try and draw Eskom out into dealing with those allegations.

94.2 This is entirely inappropriate, particularly having regard to the remedial action actually proposed by the Public Protector.

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94.3 In this regard, I state emphatically that Eskom would welcome the opportunity to deal with all of the allegations made against it as set out in the Public Protector's report.

94.4 Consequently, and whilst I deny the allegations herein contained, I do not deal with them because this is not the proper forum to do so.

95 AD PARAGRAPH 72

95.1 The allegations herein contained refer to press statements attributed to the former Minister of Mineral Resources, Mr Ramatlhodi.

95.2 There is no confirmatory affidavit of Mr Ramatlhodi attached to the EFF's application and the allegations herein contained are simply hearsay allegations.

95.3 To the extent that there were any such allegations actually made by Mr Ramatlhodi (and I do not admit that those allegations were made), they are denied.

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96 AD PARAGRAPH 73

96.1 I admit that allegations which have been made against Eskom's Board and Molefe, whether in the Public Protector's report or in certain press reports are damaging and serious.

96.2 The Public Protector, whose report forms the basis for the publication of the allegations has proposed by way of remedial action that the allegations be tested in a commission of enquiry. The EFF, through this application, is seeking to steal a march on the very remedial action which the Public Protector has proposed.

97 AD PARAGRAPH 74

97.1 I admit that Molefe issued a press statement on 11 November 2016.

97.2 The statement speaks for itself.

97.3 I will not attempt to deal with the content of the statement.

98 AD PARAGRAPH 75

These allegations are admitted.



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99 AD PARAGRAPH 76

99.1 These allegations are admitted.

99.2 However, it is important to point out that Molefe did not resign as Eskom's Group Chief Executive. I have already dealt with this above and do not repeat what I have stated.

100 AD PARAGRAPHS 77 - 79

100.1 I have fully dealt with the circumstances and facts relating to the early retirement request by Molefe, Eskom's Board approval thereof, and the subsequent decision to rescind their approval and to restore the status quo. I do not repeat what has already been stated.

100.2 To the extent that allegations herein contained are inconsistent with what I have stated, I deny them.

101 AD PARAGRAPH 79

I have already dealt with these allegations earlier herein.



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102 AD PARAGRAPH 80

102.1 Eskom would welcome the appointment of the commission of enquiry so that the allegations made in the Public Protector's report, insofar as they relate to Eskom and Molefe, can be fully dealt with and tested.

102.2 It is true that a cloud continues to hang over the reputations of both Molefe and Eskom. This is not though of their doing. This is as a result of untested allegations having been made against them. Both Eskom and Molefe have repeatedly stated that they look forward to the opportunity, in the proper forum, to deal with those allegations properly.

103 AD PARAGRAPHS 81 & 82

I have already dealt with the allegations herein contained earlier and do not repeat what I have stated.

104 AD PARAGRAPH 83

104.1 The facts relating to the matters dealt with herein have already been dealt with by me above.



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104.2 Consequently, I do not repeat what I have stated. I do though deny any of these allegations insofar as they are inconsistent with what I have stated above.

105 AD PARAGRAPHS 84 & 85

105.1 I have already dealt with the allegations herein contained earlier in this affidavit. I do not repeat what I have stated.

105.2 However, to the extent that there are any averments herein contained which are in conflict with what I have previously stated, I deny these allegations.

106 AD PARAGRAPH 86

Having regard to what I have stated above I deny the allegations herein contained.

107 AD PARAGRAPHS 87 - 91

107.1 The matters herein contained are matters for legal argument.

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104.2 Consequently, I do not repeat what I have stated. I do though deny any of these allegations insofar as they are inconsistent with what I have stated above.

105 AD PARAGRAPHS 84 & 85

105.1 I have already dealt with the allegations herein contained earlier in this affidavit. I do not repeat what I have stated.

105.2 However, to the extent that there are any averments herein contained which are in conflict with what I have previously stated, I deny these allegations.

106 AD PARAGRAPH 86

Having regard to what I have stated above I deny the allegations herein contained.

107 AD PARAGRAPHS 87 - 91

107.1 The matters herein contained are matters for legal argument.

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107.2 They will be dealt with, to the extent necessary, at the hearing of this application.

108 AD PARAGRAPH 92

I do not take issue with these allegations.

109 AD PARAGRAPH 93

109.1 I repeat what I have stated above.

109.2 Molefe's departure from Eskom was on account of the early retirement agreement which has since been rescinded.

110 AD PARAGRAPH 94

These allegations are noted.

111 AD PARAGRAPHS 96 - 102

The allegations herein contained are matters for legal argument which will be dealt with at the hearing of this application.



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112 AD PARAGRAPH 104

These allegations are denied.

113 AD PARAGRAPH 105

These allegations are admitted.

114 AD PARAGRAPHS 106 & 107

These allegations are matters for legal argument which will be dealt with at the hearing of this application.

115 AD PARAGRAPHS 108 - 110

115.1 For reasons set out above, the allegations herein contained are denied.

115.2 In any event, they constitute matters for legal argument which will be dealt with at the hearing of this application.

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116 AD PARAGRAPH 111 - 118

116.1 To the extent that the allegations herein contained are inconsistent with the facts as I have set out above, they are denied.

116.2 In any event, what is set out herein constitutes matters for legal argument which will be dealt with at the hearing of this application.

117 AD PARAGRAPH 119

These allegations are denied.

118 AD PARAGRAPH 121

These allegations are denied.

119 AD PARAGRAPH 122

These allegations are denied.

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120 AD PARAGRAPHS 12 (p 59) – 24 (p 62)

120.1 The factual premise of the allegations herein contained is incorrect. I have, however, already dealt with this previously herein and do not repeat what I have stated.

120.2 Beyond this, on the key aspects of *prima facie* rights, a reasonable apprehension of harm and the balance of convenience, the EFF does not demonstrate any of these elements. It merely asserts them. The EFF's contentions in this regard though are denied.

121 AD PARAGRAPHS 25 & 26 (p 62)

121.1 The basis upon which Molefe has returned to his post as Group Chief Executive has been explained above. I do not repeat what I have stated.

121.2 The Minister could not veto the rescission of the early retirement agreement as it was concluded on an incorrect and unenforceable premise.

121.3 Save as aforesaid, the allegations herein contained are denied.

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122 AD PARAGRAPHS 27 – 29 (p 63)

122.1 The EFF has brought its application on an extremely short time framework, offering Eskom minimal time for the preparation of this answering affidavit in relation to the EFF.

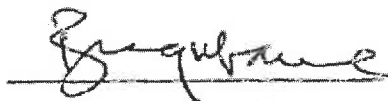
122.2 However, other than by assertion, the EFF has not fulfilled the requirements of justifying the urgency of its application under Part A. It relies substantially on speculation rather than fact.

122.3 The allegations herein contained, needless to say, are denied.

123 AD PARAGRAPHS 30 & 31

These allegation are noted.

WHEREFORE, Eskom prays that the EFF's application under Part A be dismissed with costs.


Deponent

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I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct.

This affidavit was signed and sworn to before me at
on this 27th day of MAY 2017 and the Regulations contained in
Government Notice R1258 of 21 July 1972, as amended, having been
complied with.



COMMISSIONER OF OATHS

Mduzuzi Kingsley Mamkell
commissioner of oaths
practising attorney SA
ENSAfrica 160 west street
sandown sandton 2198


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"ESK1"



The Honourable Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

REMUNERATION: MR B MOLEFE

The appointment of Mr. B Molefe as Chief Executive of Eskom with effect from 1 October 2015 has reference.

Please find set out herein, a proposal on his remuneration for your consideration.

The table below reflects the September 2015 benchmarks conducted by Mercer, PE Corporate Services and Deloitte Consulting for a Chief Executive of a large company.

| Entity | Designation | Fixed Salary | Variable Pay | Total | PE Corporate Services | Deloitte Consulting | Median | Mean | Standard Deviation |
|----------|---------------|--------------|--------------|------------|-----------------------|---------------------|------------|------------|--------------------|
| B Molefe | CEO/EXECUTIVE | 7 250 000 | 8 634 000 | 15 884 000 | 8 000 000 | 9 251 995 | 10 000 000 | 11 000 000 | 12 000 000 |

The benchmarks reflect that the current remuneration, as paid by Transnet, of Mr. Molefe is below the following statistical measurements, that is:

- a. 10.8% below the median of Mercer
- 5.4% below the median of PE Corporate Services and
- 37.9% below the average of Deloitte Consulting. The Deloitte benchmark is based on listed JSE companies of similar size.

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Eskom Holdings SOC Ltd Reg No 2002/016827/30

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In keeping with his current remuneration paid by Transnet and taking the benchmarks into consideration, I submit for your approval the following annual recommended total guaranteed remuneration package:

| EXECUTIVE | POSITION | TOTAL GUARANTEED PACKAGE |
|-----------|-----------------|--------------------------|
| B Molefe | Chief Executive | R7 658 000.00 |

Minister's favorable consideration hereof would be appreciated. Should Minister have any queries hereon, please do not hesitate to contact me.

Thanking you in anticipation.

Yours sincerely

Dr Baldwin Ngubane

CHAIRMAN

Date: 16/10/15

APPROVED

Ms Lynne Brown (MP)
MINISTER OF PUBLIC ENTERPRISES

Date:

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"ESK2"



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

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Dr. B Ngubane
Chairperson
Eskom Holdings SOC Limited
P.O. Box 1097
Magawatt Park
Johannesburg
2000

Tel: 011 800 8808
Fax: 011 800 4838
Email: fieldwin.ngubane@comnet.com
DanielSM@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 10 October 2016, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 666 000.00 to Mr Molefe with effect from the date of appointment.

Following my letter to you, dated 2 October 2016, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.


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I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely


HIS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES
DATE: 1/11/2005



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STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: GROUP CHIEF EXECUTIVE

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 858 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund – A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

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 Eskom Holdings SOC Ltd Reg No 2002/014827/13

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OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Bestmed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000,00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
 - Payment of Professional fees (maximum of 2 work related institutions).
 - Group Life Cover – equal to three times annual pensionable earnings.
 - Home installed telephone for business usage.
 - Short Term Incentive Scheme (STI) - Annual Performance Bonus
- Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

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OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2016.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. Anton Minnaar and his Executive Support Team will assist you with all the support functions. Please contact Anton directly on tel. (011) 600-3088.

Kind regards

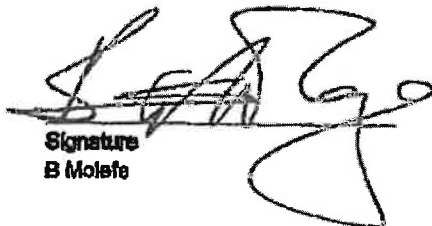


Dr Baldwin Ngobane

CHAIRMAN

Date: 09/11/15

ACKNOWLEDGMENT OF RECEIPT:



Signature
B Molefe

11.11.15.
Date



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The Hon Ms Lynne Brown (MP)
 Minister of Public Enterprises
 Infotech Building, Suite 401
 1090 Arcadia Street
 Hatfield
 Pretoria
 0001

Dear Minister

RETIREMENT ARRANGEMENTS – BRIAN MOLEFE

As requested by the minister, Eskom is currently drafting the Group Chief Executive's 5 year contract for the minister's input.

As part of the drafting process, however, an important principle regarding /r Molefe's retirement fund needs to be addressed and I request the minister's prior approval before we submit the draft contract for further input.

It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr. Molefe has served in numerous high ranking South African organisations at executive level, essentially to stabilise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To breach this gap, the following contractual stipulations are proposed:

- Regardless of Mr Molefe's age after the 5 year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.
- That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.

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 Eskom Holdings SOC Ltd Reg No 2002/014657/30

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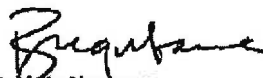
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RETIREMENT ARRANGEMENTS – BRIAN MOLEFE (Continued)

- That Eskom carries the cost of such penalties (to be paid over to the EPPF).
- In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other BOC or government pension fund.
- Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

I trust that this will receive the minister's favorable approval.

Yours sincerely



Dr Baldwin Ngubane

CHAIRMAN

Date: 25/11/15




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|---|---|---------------------------------|-----------|
|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

**MINUTES OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 07-2015/16
HELD ON TUESDAY 9 FEBRUARY 2016 IN THE HUYO NKULU BOARD ROOM, EXECUTIVE
FLOOR, MEGAWATT PARK**

STRICTLY CONFIDENTIAL

PRESENT

Members

| | |
|----------------|-------------------------------|
| Ms V Klein | Chairperson |
| Ms N Carrim | Member |
| Mr B Molefe | Group Chief Executive ("GCE") |
| Dr B S Ngubane | Member |
| Mr Z Khoza | Member |
| Ms C Mabude | Member |

Officials

| | |
|--------------|---------------------------|
| Mr A Minnaar | Executive Support Manager |
| Ms S Daniels | Company Secretary |

APOLOGIES

| | |
|---------------|--------|
| Mr L Giovanni | Member |
|---------------|--------|

1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM


A quorum being present, the Chairperson declared the meeting duly constituted.

4. DECLARATION OF INTERESTS

There were no declarations pertaining to items on the agenda and a declaration of interest register was circulated for signature.

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|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2016 |
| | | Office of the Company Secretary | |

RESOLVED THAT:

7.4.1 the alignment of the Board fee structure between that of Eskom and Transnet be recommended to the Minister of Department of Public Enterprises for approval.

The Chairperson noted the significant efforts of the Board Chairman to date to correct the misaligned Board fee structure.

7.5 Group Chief Executive: Conclusion of contract

Mr Minnaar reminded the meeting that the Minister had requested that the contract be concluded for a 5 year period and that she had also requested to have oversight over the contract. In addition, Eskom was given until the end of January 2015 to conclude the matter. A letter had however been addressed to the Minister regarding the retirement of the GCE and a response was awaited.

Mr Minnaar noted that a fixed term contract of 5 years at this level was a first for Eskom and was also not aligned with best practice. He explained the negative impact of this on the retirement benefits of the relevant individuals (GCE and CFO) and proposed that approval be granted for remedial action based on past practices and precedents in Eskom to counter this impact, which could include additional pensionable service being granted and/or penalties being waived. Mr Minnaar quoted a number of examples where this had been done in Eskom in the past.

Mr Minnaar thereafter spelled out the required resolution noting the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund rules. The request was for the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up the shortfall in years, waive the penalties and refund to the Pension and Provident Fund the actual cost relating to the additional service. He explained that refunding the cost would not reflect as emoluments of the executive director in question as this would constitute a transaction between Eskom and the Fund only with no money being paid to the individual.


The Chairperson summarised her understanding of the proposal as far as it would relate to the GCE. In respect of the CFO, the matter would be more complicated as he would not be 50 years of age at the time that the fixed term contract came to an end. The meeting enquired whether a proposal could be considered for the CFO and tabled for consideration in due course.

RESOLVED THAT:

7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;



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|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
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| | | Office of the Company Secretary | |

7.5.2 in cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;
- ii. waive penalties applicable to early retirement; and
- iii. refund EPPF actuarial costs for additional service added, plus penalties applicable to early retirement; and

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting Reference Document 5.1(a)

The minutes of the In-Committee meeting No. 06-2015/16 held on 22 October 2015, having been circulated, were considered. The Chairperson requested that the minutes be carefully reviewed to ensure correctness. She noted, for example, an error in the minutes that needed to be corrected. The Company Secretary confirmed that the wording of the relevant item would be revised accordingly. The Chairperson furthermore noted that discussions around the travel policy and appointment of non-executive directors on the board of subsidiary companies had been discussed. The Company Secretary was requested to consider the matter based on the provisions of the Eskom Memorandum of Incorporation.

RESOLVED THAT:

- 8.1.1 the minutes of the People and Governance Committee In-Committee meeting No. 06-2015/16 held on 22 October 2015 are approved as an accurate reflection of the proceedings, subject to the proposed amendments; and
- 8.1.2 the Chairperson of this meeting is duly authorised to sign the minutes.

9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising Reference Document 6.1(a)

The Action List as included in the meeting papers was NOTED.

10. GENERAL

There were no further matters for discussion.

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RESOLUTION

AT ITS MEETING ON 9 FEBRUARY 2016, THE PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD RESOLVED THE FOLLOWING:

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.
2. 2. cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:
 - i. Bridge the gap to make up for the 10 years'
 - ii. Waive penalties applicable to early retirement
 - iii. Refund EPPF actual costs for additional service added, plus penalties applicable to early retirement



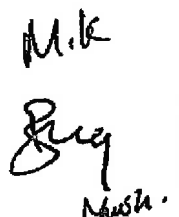
Dr B S Ngubane

CHAIRMAN: ESKOM



Ms V J Dain

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE



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"ESK7"



Member's guide to benefits

A member of the Eskom Pension and Provident Fund (The Fund) participates in a defined benefit pension fund. This means that the member will retire or withdraw in terms of certain defined formulae detailed in the rules of the Fund. For example, when a member retires, he/she will receive a pension from the Fund that will depend largely on the number of years service to the company and salary at retirement. Should you however withdraw before retirement, the benefit that you will receive will be based on accrued value as determined by the formula.

As a member of the Fund you will receive regular benefit statements that will give you an estimate of your pension at retirement in present value every year.

This brochure aims to set out the rules of the Fund. It is in a member's best interest to read this brochure and to contact the Fund if there are any questions or concerns.

1. MEMBERSHIP OF THE EPPF

All permanent employees of employers that participate in the Fund, who are younger than the normal retirement age (65), and pay monthly contributions to the Fund, are deemed to be members of the Fund.

Pensioners who receive a monthly pension from the Fund are also part of the membership of the Fund.

2. CONTRIBUTIONS TO THE FUND

The member and employer contribute fixed percentages of salary as monthly contributions to the Fund.

Members

1. Members contribute 7.3% of their pensionable salaries to the Fund every month.

2. However, due to historical reasons, there are still a few members who contribute 4% or 6% of their pensionable salary.

3. Former non-contributory members, who were in service before the 1st of August 1964, now contribute 7.3% of their basic salaries. For the calculation of retirement or death a service benefits, the pensionable salary will be increased by a factor of 25%.

Note: 4% and 6% members can no longer choose to convert to 7.3% membership.

Employer contributions

The Employers contribute 13.5% of the members' pensionable salaries on behalf of the members.

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ADDITIONAL CONTRIBUTIONS

1. Additional voluntary contributions

A member may elect to contribute additional amounts into the Fund in order to boost retirement benefits. These extra contributions will be administered in the Additional Voluntary Contribution Scheme and the member will be able to access the money on withdrawal or retirement.

Lump sum amounts, such as transfers from previous employers' retirement funds, can also be invested in the Scheme.

The member's contribution may vary from month to month, with no limit to the amount. However, the maximum tax deduction that SARS will allow is R 1 800 per annum, which is treated as an arrear contribution to a pension fund, implying that any additional contribution more than R1 800 per annum, will be made from after tax money. The Fund issues tax certificates at the end of February every year, which need to be submitted to the Receiver of Revenue, in order to qualify for a tax deduction. Balance certificates are also issued, to show the growth for the year.

Note: The application forms are available from the employer's HR department or on the Fund's website.

(For more details on the Fund's Additional Contribution Scheme, please see Item iii)

2. Performance bonus contributions

Contributions to the Fund are also deducted when performance bonuses are paid. Members pay 7,3% of their performance bonuses as a contribution and the employer pays 13,5% on behalf of the member. These contributions are invested for the member in the Performance Bonus Contribution Scheme.

3. BENEFITS OF THE FUND

Benefits are defined in terms of the Rules of the Fund.

3.1 BENEFITS PAYABLE ON WITHDRAWAL

Withdrawal benefits refer to benefits payable upon resignation, dismissal or abscondment.

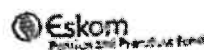
The Minimum Individual Reserve payable to a member must be the greater of the Accumulated Contribution or the Fair Value.

Accumulated Contribution - the Fund calculates the capital value of the member's accumulated past contributions (the total amount of money the member has paid into the Fund) plus interest. The rate of interest after December 2001 must compare reasonably with the actual rate of investment return that the Fund has earned on its assets.

Fair Value - the Fund must calculate the value of the "accrued deferred pension", which is the amount of pension that a member has earned for past service up to the date of leaving the Fund, based on the member's salary at the date of leaving the Fund.

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The capital value of this amount is calculated using financial assumptions, including items such as the rate of future salary increases and future investment returns.

The Pension Funds Act prescribes the assumptions used in calculating the above benefits.

3.2 RETRENCHMENT

The Minimum Individual Reserve payable to a member must be the greater of the Accumulated Contribution, or the Fair Value, or the Retrenchment benefit.

Retrenchment benefit - Three times the member's own contributions (the total amount of money the member has paid into the Fund).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are added to the above withdrawal benefits.

Note: When a member withdraws from the Fund, only the first R 1 800 is tax free, the balance is taxable at the member's marginal tax rate.

Options on withdrawal

The following options are available on withdrawal:

- a) Transfer the full benefit to an approved pension fund (such as a new employer's fund), retirement annuity (individual pension plan bought from an insurer where the member keeps making contributions) or a preservation fund (bought from an insurer to preserve benefits, but no future contributions allowed).
- b) Take the maximum tax-free amount (R1 800) and transfer the balance to an approved pension fund or a retirement annuity.
- c) Take the full benefit in cash.
- d) Take R1 800 tax-free and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme. (For full details about the Deferred Pension Scheme, please see item 4.)
- e) Transfer the full actuarial value into the Fund's Deferred Pension Scheme.
- f) Withdraw the accumulated contributions and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme (Retrenchment only).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional withdrawal benefits.

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3.3 RETIREMENT BENEFITS

The following retirement options are available:

Note: all retirement benefits are calculated on the following basic formula:

*Final Average Emoluments x Service in months x pension rate

(*Final Average Emolument = Final Average Pensionable Salary)

a) Normal retirement

All members must retire from the Fund at the end of the month in which they reach the age of 65.

b) Early retirement with penalty

A member may elect to take early retirement between the ages of 55 and 63, but penalties apply: The member's annual pension is reduced by 3.9 % per annum or .325 % per month until age 63. The employer's approval is not required.

c) Early retirement without penalty, without potential service.

A member between the ages of 50 and 63 may go on early retirement without penalty and without potential service by mutual agreement with the employer, where the employer will pay for the cost of early retirement (i.e. the penalty). Members between the ages of 50 and 55 need to have contributed to the Fund for a minimum of ten years in order to qualify for this benefit.

A member between the ages of 63 and 65 may retire without penalty and without potential service with no reduction in benefits or costs to the employer. The employer's approval is not required.

d) Early retirement with separation benefits.

A member between the ages of 50 and 65, who has contributed to the Fund for a minimum of 10 years, may go on early retirement with separation benefits and without penalties, by mutual agreement with the employer.

The member will be granted an additional 10% of his actual service as part of his benefits.

The employer will carry the cost of early retirement (including the 10 %) and any extra service that might be granted by the employer over and above the 10 %.

e) Retirement due to ill health

A member, who is permanently physically or mentally disabled and is granted an ill-health retirement benefit in terms of the Rules of the Fund, will, in addition to actual service, receive an additional 75 % of potential service up to age 65. There is no age or minimum service requirement.



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Options on retirement

A member may:

- Take a monthly pension for life plus a maximum of one-third lump sum, or
- Take a monthly pension for life plus the maximum tax-free lump sum (not more than one third), or
- a Take a monthly pension for life plus any nominated amount of lump sum (not more than one third), or
- a Choose not to take a lump sum, but to receive an increased monthly pension for life.

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional retirement benefits.

3.4 DEATH BENEFITS

All death benefit claims are investigated and adjudicated subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen may be taken into account. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death in service with dependants

Death benefit lump sum

If a member dies in service and is survived by a spouse and/or eligible children and/or other dependants, the following death benefit lump sums are payable:

- a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution- and Performance Bonus Schemes will be paid to the surviving dependants as a lump sum death benefit.
- b) In case of minor children, their portion of the death benefit will be invested in the Fund's instalment lump sum account or in an external trust account until age 21.
- c) The benefit will be divided per household if there is more than one household.

Note: Eligible children refers to the member's own children under the age of 21, and/or legally adopted children, or a disabled child over the age of 21.

Monthly pension

If a member dies in service and is survived by a spouse, and/or eligible children, the following monthly pension benefit is payable:

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An annual pension will be calculated (including potential service to age 65 years). The spouse qualifies for 60% of this benefit, while a spouse with one eligible child qualifies for an additional 30% of the benefit. (This amounts to 90% of the benefit in total.) If the spouse has two or more children, the household then qualifies for 100% of the benefit.

- Notes: 1) The benefit will be divided if there is more than one household.
2) A disabled child receives a pension for life.

Death in service without dependants

If a member dies without leaving a surviving spouse, eligible children, or any other dependants, the greater of two death benefit lump sum calculations as shown below will be payable to his /her estate:

- a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.
b) Final average salary multiplied by the member's actual service, divided by 120 plus once the member's annual pensionable salary, plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.

Death in service with a live-in partner relationship

If a member dies in service and the Fund receives a claim from a live-in or common-law partner, the Fund will apply the dominant/servant relationship test where the partner who was a member of the Fund was dominant in the relationship, with the surviving partner substantially dependent on the deceased. In such an event, the surviving partner may be considered to benefit from the lump sum death benefit.

If the surviving partner was not financially dependent on the deceased, but was nominated on the beneficiary nomination form, he/she may be considered for a portion of the lump sum death benefit.

Death after retirement with dependants

Death benefit lump sum

A lump sum of R3000 is payable to the surviving spouse, and/or eligible children and / or other dependants, if any.

Monthly pension

If a pensioner dies and is survived by a spouse, and/or eligible children, the Fund will recalculate a monthly pension based on the original value of the annual pension at retirement (disregarding the amount already paid as a lump sum at retirement) plus all increases the pensioner received while on retirement.

The spouse will receive 60 % of the recalculated pension for life, even if he/she remarries.

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Plus

A further 30 % for one eligible child or 40 % for two or more eligible children until they turn 21 years.

If a pensioner dies and is survived by one eligible child only (no surviving spouse), the child will receive 60 % of the recalculated monthly pension until age 21.

If a pensioner dies and is survived by two or more children, they will receive 100% of the recalculated monthly pension until age 21.

Death after retirement without dependants

Death benefit lump sum (payable to the estate)

A lump sum of R3000.

Plus

The greater of the excess benefit (if any) as defined below:

- a. Twice the member's annual pensionable salary at the time of retirement less total benefits already paid (lump sum plus monthly pension); or
- b. The member's annual pensionable salary at the time of retirement plus 10 % of the member's final average salary for each completed year of pensionable service, less total benefits already paid (lump sum plus monthly pension paid).

4. DEFERRED PENSION SCHEME

General conditions

When a member resigns or is granted a retrenchment benefit, he/she has an option to defer his/her transfer value into the Deferred Pension Scheme.

The value of the deferred benefit is calculated by using the retirement formula in the Rules.

The following conditions are applicable:

- a) The decision to defer is irrevocable once made.
- b) No further additional contributions are allowed into the deferred scheme.
- c) Interest, compounded on a monthly basis is added to the member's value in the deferred scheme at an interest rate reviewed by the Board of Trustees on a quarterly basis.
- d) The Board of Trustees may declare bonuses on the Scheme, depending on the Fund's investment performance.
- e) The member can only retire from this Scheme at any time from age 55, but not later than age 65.



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Note: Updating personal and address details are very important, as the Fund sends out a statement to show the member's balance in the Scheme in March of every year.

Benefits applicable to the Scheme

Retirement benefits

At the date of the commencement of the pension a member may elect to receive a lump sum in cash of up to one-third of the accumulated value (transfer value, interest and bonuses, if any) in the Scheme. The balance shall be utilised to provide a monthly pension for life.

The member may choose instead not to take a lump sum, but to receive an increased monthly pension.

Death benefits

All death benefit claims are investigated and considered for payment subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death before retirement

If a member dies before retirement from the Scheme, the accumulated, of the members, value is paid as a lump sum to the dependants, or to the member's estate if there are no dependants.

No monthly pension is payable to the dependants.

Death after retirement with dependants

If the member is survived by the spouse he/she had at the date of the commencement of the pension, a life-long pension equal to 60% of the member's monthly pension at date of death is payable.

If there are eligible children, a pension is payable to them until age 21.

Death after retirement without dependants

If the member does not have dependants, the pension ceases on the death of the member.

If the member re-marries after the commencement of the pension, the new spouse is not entitled to a monthly pension from the Scheme upon the death of the member.






5. ADDITIONAL VOLUNTARY CONTRIBUTIONS SCHEME

In order to enhance their pension benefits at retirement, members can contribute additional amounts to the Fund's Additional Voluntary Contribution Scheme.

Benefits from any other approved retirement arrangement (such as the withdrawal benefits from a previous employer) may be transferred to this Scheme when joining the EPPF.

Members can make lump sum payments into the Scheme at any time.

Members can also contribute on a monthly basis to the Scheme and may increase or decrease their monthly contributions at any time.

In terms of the Pension Funds Act, contributions are not refundable until termination of service and members may not take a loan from the Scheme. No other person or institution may claim the member's monies from this Scheme.

Monthly and lump-sum contributions up to a maximum of R1 800 per annum are currently tax deductible.

The R1 800 per annum tax deduction is over and above the amount deductible in respect of normal pension fund contributions and any contributions towards a retirement annuity fund.

A tax certificate in respect of contributions to the Scheme, together with a certificate reflecting interest and bonuses earned, is issued annually in February.

If a member elects not to defer the pension benefits upon withdrawal, the accumulated value in the Scheme will be refunded to the member.

At retirement the Fund will convert the accumulated value in the Scheme into a pension. A member can elect to take one third of this amount as a lump sum, or choose not to take a lump sum in order to receive a bigger amount as a monthly pension.

As for the normal pension, the additional pension benefit is guaranteed for life and the life of the member's spouse and for any children as long as they are eligible.

The Board of Trustees reviews the interest rate on this and the Fund's other schemes, on a quarterly basis.

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6. HOW TO CLAIM BENEFITS

Benefit application forms are hosted on the Fund's website (www.eppf.co.za) and alternatively are available at local Human Resources Offices or the Fund's offices.

Important Notes to speed up payment of benefits:

1. Ensure that your personal details are always updated on your personal file at HR.
2. Ensure that you are registered with SARS as a taxpayer.
3. Ensure that benefit application forms are correctly and fully completed.
4. Ensure supporting documents are original certified copies and are attached to the benefit application forms.
5. Ensure that you understand the available options on the application forms, as well as the implications of the options elected. (Contact HR for information in this regard.)
6. If applicable, attach certified copies of divorce orders and the settlement agreements.
7. Ensure that your dependants know how to claim benefits.
8. Ensure that your beneficiary nomination form is always updated and kept at HR.



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EXECUTIVE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

entered into between

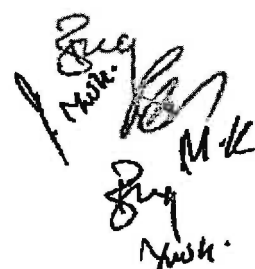
ESKOM HOLDINGS SOC LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 6512285778086)

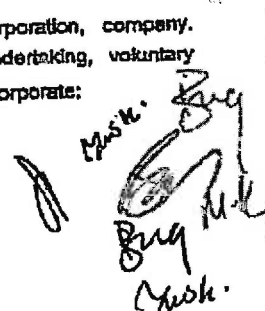


WHEREBY IT IS AGREED AS FOLLOWS :

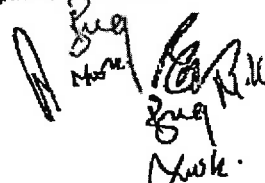
1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1. words importing
- 1.1.1. any one gender include the other gender;
- 1.1.2. the singular include the plural and vice versa; and
- 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and vice versa;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -
- 1.2.1. "Act" means the Labour Relations Act, 1995 as amended;
- 1.2.2. "Agreement" means this agreement together with the annexures thereto;
- 1.2.3. "Associate Company" means an Entity in which the Company and/or its subsidiaries holds at least 30 % (thirty percent) of the interest of such Entity;
- 1.2.4. "Board" means the board of directors of the Company from time to time;
- 1.2.5. "Business" means each and every business undertaking engaged in by the Company and each and every Group Company from time to time;
- 1.2.6. "Business Day" means any week day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;
- 1.2.7. "Commencement Date" means 1 October 2015;
- 1.2.8. "Company" means Eskom Holdings Limited (Registration No. 2002/015527/30);
- 1.2.9. "Executive" means Brian Molefe (Identity No. 6612285778086);
- 1.2.10. "Entity" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate;

- 1.2.11. "Group Company" means the Company, any Associate company of the Company, any partnership in which the Company is a partner, any company which is a subsidiary company of the Company, any company which is a holding company of the Company, any company which is a subsidiary of or is controlled by such holding company, any division of such holding company and/or any joint venture company of which the Company or such holding company is a shareholder, and collectively referred to as "Group Companies";
- 1.2.12. "Parties" means the Executive and the Company and a reference to "Party" shall embrace each one of them individually;
- 1.2.13. "Pensionable Age" means 65 (sixty five) years of age;
- 1.2.14. "Signature Date" means the date of signature of this Agreement by the last signing of the signatories hereto;
- 1.2.15. "Termination Date" means the date upon which the Executive's employment by the Company ceases or is terminated for any reason whatsoever;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days or Business Days is prescribed in this Agreement, same shall mean Business Days;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination

or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. APPOINTMENT OF EXECUTIVE

- 2.1. The Executive commenced employment with the Company on 1 October 2015.
- 2.2. With effect from the Commencement Date, the Company appoints the Executive as Group Chief Executive of the Company. The Executive accepts such appointment.
- 2.3. To the extent that the Executive is required to become a director of any Group Company, the Executive undertakes to be bound to any such Group Company on the terms of this Agreement *mutatis mutandis*. Each undertaking provided by the Executive in this Agreement shall also constitute a *stipulatio alteri* in favour of any Group Company and is capable of acceptance at any time by it.
- 2.4. The Executive will be employed at the Company's premises situated at Eskom, Megawatt Park, Maxwell Drive, Sunninghill or such other location as the Company may determine from time to time on notification to the Executive.
- 2.5. The Executive warrants in favour of the Company that he is not contractually or otherwise prohibited or limited from fulfilling his obligations in terms of this Agreement.

3. PERIOD OF EMPLOYMENT

- 3.1. The Executive's employment with the Company is based on a fixed-term contract that expires on 30 September 2020 ("the Termination Date"). The employment shall continue until this date subject to either Party being entitled to terminate the employment relationship by giving the other not less than 6 (six) months' written notice. The Company may elect to pay the Executive *in lieu* of notice.
- 3.2. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to terminate the Executive's employment with or without notice or on such other basis as it considers appropriate for any reason justified in law.
- 3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation to the Executive's employment with the Company, the Company shall be guided by, *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion to

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appoint a non-executive director to chair any disciplinary, performance, grievance or other enquiry or utilise an external third party for that purpose.

4. EFFECT OF TERMINATION OF EMPLOYMENT

The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the Parties as at the Termination Date.

5. SUSPENSION OF EMPLOYMENT

If the Company suspects that the Executive is guilty of the conduct which may, if proved, justify his dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly constituted enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Executive for a reasonable period having regard to the common law and the provisions of the Act and other applicable statutes during which the Executive shall -

- 5.1. not be entitled to attend work at the premises of the Company and/or any Group Company; and
- 5.2. be entitled to his Remuneration Package.

6. DUTIES OF EXECUTIVE

The Executive shall -

- 6.1. satisfactorily, carry out, *inter alia*, the duties and responsibilities as are from time to time assigned to him, and which are consistent with his status, including, but not limited to, the key performance indicators which are agreed to on an annual basis with the Board;
- 6.2. devote the whole of his time and attention during the Company's normal business hours, and such reasonable amount of additional time as may be necessary, having regard to the exigencies of the Business, to the Business and shall not, while he is employed by the

Company, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, the holder of an option, member, employee, consultant, contractor, financier, agent, representative, assistant, whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any company, corporation, business, trade, undertaking or concern -

6.2.1. other than that of the Company and/or any Group Company; or

6.2.2. which competes with the Business.

the undertakings in clauses 6.2.1 and 6.2.2 being separate, provided that he shall not be deemed to have breached his undertakings by reason of -

6.2.3. his having *bona fide* financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (including derivatives) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

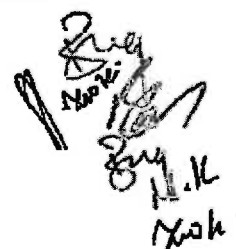
6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. obey the orders and directions of the Board and use his utmost endeavours to protect and promote the Business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it, such information and reports as may be required of him in connection with the performance of his duties and the Business.

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7 REMUNERATION

- 7.1. As remuneration for his services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 656 000.00 (seven million six hundred and fifty six thousand rand) ("Remuneration Package"), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such amount shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.
- 7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in April of each year.

8. SHORT TERM INCENTIVE SCHEME

- 8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.
- 8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. LONG TERM INCENTIVE SCHEME

- 9.1. The Executive be entitled to participate in the Company's long term incentive ("LTI") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.
- 9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive's pensionable remuneration.
- 9.3. In the event of the vesting date occurring beyond the specified term of the contract and the contract terminating on the Termination Date, all such granted values will be deemed to have accrued on the Termination Date and will be calculated as part of the final payment to you. Insofar as vesting after the specified term of the contract is dependent on targeted performance criteria the performance will be deemed to be "on target". Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.
- 9.4. On resignation by mutual agreement all Grants allocated will be payable on a pro-rated basis.

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10. PENSION AND PROVIDENT FUND

- 10.1. The Executive shall continue as a member of the Eskom Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.
- 10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. MEDICAL AID

- 11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.
- 11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. GROUP LIFE ASSURANCE AND FUNERAL BENEFIT

- 12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.
- 12.2. The Company shall pay the Executive's contribution thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 7 above.

13. ADDITIONAL BENEFITS

- 13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above

13.1.1. Bank Fleet Card

- 13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the

91

Company, the use of which is governed by the Company's rules and policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. Financial/Tax Planning Fees

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. Personal Security

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscription to a security company, guards, vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. Telephone Services

13.1.4.1. The Company will bear the costs of the Executive's telephone that is utilised for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

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13.1.4.3. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

14. ANNUAL LEAVE

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. SICK LEAVE

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he had sight of that policy.

16. CONFIDENTIALITY

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to non-public information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "Third Parties") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company, its clients and/or the Third Parties; formulae, strategies, methods, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other confidential information of the Company and/or any Group Company, its clients and/or the Third Parties (the "Confidential Information").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will he permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;

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- 16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential information;
- 16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company and/or any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.
- 16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential Information in his possession, and all copies thereof.

17 INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

- 17.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.
- 17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or Group Company may nominate.
- 17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without

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limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

- 17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, such documents and all copies shall be returned to the Company and/or any Group Company.

18. STIPULATIO ALTERI

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a *stipulatio alteri* in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. GENERAL

- 19.1. The Executive shall adhere to the Company's written policies, procedures or the like which are applicable from time to time, save for where they have been amended by this Agreement.
- 19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.
- 19.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them.
- 19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.
- 19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be in waiver of its rights hereunder nor shall such relaxation or

indulgence preclude or estop the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

- 19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.
- 19.7 The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. DOMICILIA CITANDI ET EXECUTANDI

20.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses -

20.1.1. the Company:

Physical: Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg
 Postal: P.O. Box 1091, Johannesburg, 2000
 Telefax: 011 800 6132

20.1.2. the Executive:

Physical: 759 Camelford Road, Cornwall Hill Estate, Irene, 0178
 Postal: P.O. Box 18, CORNWALL HILL, 0178
 Telephone: 012 6671885

20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

20.3. Either Party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.

20.4. Any notice to a Party -

20.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the

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10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained if written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. RESIGNATION

21.1. On the Termination Date, the Executive will *ipso facto* be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. ELECTRONIC AND OTHER COMMUNICATIONS

The Executive hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic conversations, e-mails and any stored files.

23. RULES, REGULATIONS AND POLICIES

The Company has various rules, regulations, policies and procedures ("the Policies") in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's Intranet, alternatively copies may be requested from the Company's human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. SEVERABILITY

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

25. COSTS

The costs of and incidental to the drawing of this Agreement shall be paid by the Company.

26. ARBITRATION

In the event that the Company's internal mechanisms contemplated in clause 3.3 above have been exhausted, then any dispute concerning the fairness or otherwise of the termination of the Executive's employment, the Executive's performance, a grievance lodged by the Executive, or any other dispute arising out of the Executive's employment that would, save for this clause, fall to be determined by the CCMA or a Court having the requisite jurisdiction, shall be finally resolved by arbitration conducted in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator agreed to by the Parties or, failing such agreement, appointment by that Foundation. The Company will be responsible for the costs of the arbitrator, the venue and any recording or transcription services related to any such arbitration.

Signed at Megawatt Park this 7th day of MARCH 2018.

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 M.K.

FOR: **ESKOM HOLDINGS LIMITED**

Signature: _____
who warrants that he / she is duly authorised thereto
 Name: B S Ngubane
 B S Ngubane CHAIRMAN
 Date: 15/03/16
 Place: Mogalese Poort
 Witness: _____
 Witness: _____

Signed at Sandton this 7th day of March 2016

BRIAN MOLEFE
 Signature: _____
who warrants that he / she is duly authorised thereto
 Name: B Molefe GROUP CHIEF EXECUTIVE
 Date: 7.3.16
 Place: Sandton
 Witness: _____
 Witness: _____

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Brian Molefe

"ESK9"

Brian MOLEFE

P O Box 18, Camwall Hill, 0178.
bm1@mweb.co.za

11 November 2016

Dr. B Ngubane
Chairman
Eskom SOC
Megawatt Park
SUNNINGHILL

Sir

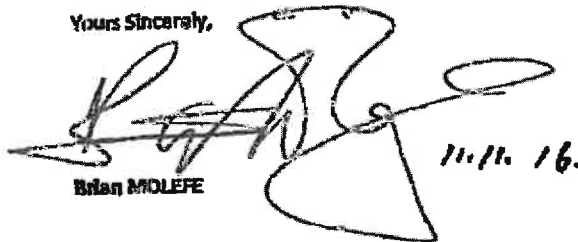
EARLY RETIREMENT – EMPLOYEE NO 4610263

I hereby request for approval for early retirement in terms of the rules of the Eskom Pension Fund read in conjunction with a resolution of the People and Governance subcommittee of the board dated 09 February 2016.

My last day of service will be 31 December 2016.

I would like to take this opportunity to thank the board for its guidance and leadership through very difficult times during my tenure as Group Chief Executive of Eskom.

Yours Sincerely,


Brian MOLEFE

11/11/16.




Mike Grey

"ESK10"

Mr B Molefe
UN: 08102515

Dear Brian

EARLY RETIREMENT

Your letter dated 11 November 2016 is hereby acknowledged and it is confirmed that your last day in service will be 31 December 2016.

In terms of the rules of the Eskom Pension and Provident Fund (EPPF) and Board resolution, your early retirement is approved.

The following payments are due to you:

- Salary up to 31 December 2016 (also refer "Suspense Account" below).
- Accrued leave pay.
- Short Term Bonus calculated on your Pensionable Earnings (nine months proportional bonus based on a 50% on-target performance).
- Payments in terms of the LTI Scheme. Currently, there are two grants outstanding according to the letter dated November 2016, namely:
 - Grant 11 that was awarded in April 2015 and vests in March 2018
 - Grant 12 that was awarded in April 2016 and vests in March 2019

In terms of the rules of the scheme, the LTI payments will be made as soon as possible after the two vesting dates. Both grants will vest at 50%.

1. Pension Fund

Your early retirement has been approved in terms of EPPF rule 28 and 21.4, which means that penalties will be waived and that potential service to age 63 is granted.



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2. Suspense Account

To make provision for any other unforeseen costs after your retirement date, an amount of R15,000.00 will be retained in a suspense account for this purpose. Costs incurred after resignation normally relate to taxable expenses associated with the Bank Fleet card and security services.

3. Occupational Diseases

Any claims against Eskom for occupational diseases is subject to an Eskom exit medical examination report issued by your nearest Eskom medical centre. Otherwise, no claims will be considered.

4. Certificate of Service

A certificate of service covering the period of your employment with Eskom will be handed to you on 31 December 2016.

5. Eskom Property

Any other Eskom equipment in your possession, including the following should be returned to Executive Support (Megawatt Park, C3 U41) on 31 December 2016.

- Eskom security permit
- Bankfin petrol card and e-tag
- Samsung Slate 3G card

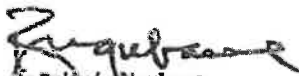
Eskom has copyright on all documents, records and any other material which you may have prepared or have come into possession since your employment starting date with Eskom. It is necessary that this should remain in Eskom's possession.

6. Tax Certificate

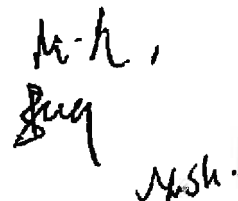
An IRPS tax certificate in respect of the 2016 / 2017 tax year will be issued.

I wish you every success for the future.

Yours sincerely


 Sir Baldwin Ngubane
 CHAIRMAN
 Date: 24/11/16





Media report

"ESKII"



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15 Halfway, 6028 Suite 301 InfoTech Building 1080 Acacia Street Halfway
Tel: 012 431 1118/1180 Fax: 012 431 4038 Private Bag X9079, Cape Town, 8000 Fax: 021 468 2381

To: All Media
Date: 23 April 2017
For Immediate Release

Minister Brown declines Brian Molefe's pension pay-out

The Minister of Public Enterprises, Ms Lynne Brown, has declined Eskom's proposal to pay its former Group Chief Executive, Mr Brian Molefe, a R30-million pension pay-out.

"I have considered the Eskom Board's reasoning in formulating the proposed pension payout and cannot support it.

"I found the argument presented by the Board on why the pension arrangement was conceived lacking in legal rationale, and it cannot be substantiated as a performance reward because Mr Molefe has already been granted a performance bonus for his contribution to the turnaround of Eskom.

"Nor is the proposed pension payout justifiable in light of the current financial challenges faced not only by State-Owned Companies (SOCs), but by the country as a whole.

"I have in the past asked Eskom and the other five SOCs in my portfolio to demonstrate financial prudence and social consciousness when considering executive emoluments.

"Given that I was not a party to the contract of employment concluded between the Eskom Board and Mr Molefe, I have instructed the Board to urgently engage Mr Molefe and report back to me with an appropriate pension proposal within seven days.

"It is unfortunate that such a sensitive and private matter was handled so recklessly.

"Finally, I have asked the Board to investigate how its proposal got into the public domain prior to my having had the opportunity to consider it," Minister Brown said.

For enquiries contact Colin Cruywagen on 082 3779916.

Issued by the Ministry of Public Enterprises

23 April 2017

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By M.K.

"ESK12"



Brian Molefe

Dear Brian

YOUR APPLICATION FOR EARLY RETIREMENT

In view of the latest development around your retirement from Eskom, as well as engagement with our shareholder minister, the board has had to review its decision of 21 November 2016.

Having considered all the matters at hand, particularly that our shareholder minister does not support our decision, we have resolved to rescind our decision. Therefore, you are hereby requested to resume your duties as the Group Chief Executive of Eskom.

We are cognisant of the potential impact on your current role, but given the circumstances, we are convinced that this move would be in the best interest of South Africa and its people.

We look forward to your favourable response.

Yours sincerely

Dr BS Ngubane
CHAIRMAN
 Date: 3 May 2017


ACCEPTED/DECLINED

BM Molefe
 Date: 3 May 2017

Head Office
 Megawatt Park Maxwell Drive Sunninghill Sandton
 PO Box 1091 Johannesburg 2000 SA
 Tel +27 11 800 2030 Fax +27 11 800 5803 www.eskom.co.za
 Eskom Holdings SOC Ltd Reg No 2002/016527/30

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**MINUTES OF THE SPECIAL ESKOM BOARD MEETING 03-2017/18 HELD ON 2 MAY 2017
AT THE CHAIRMAN'S OFFICE, MEGAWATT PARK, SUNNINGHILL AT 14H00**

PRESENT**Board Members**

| | |
|----------------------|--------------------------------------|
| Dr BS Ngubane | Chairman |
| Mr ZW Khoza | Non-executive director |
| Ms VJ Klein | Non-executive director |
| Ms C Mabude* | Non-executive director |
| Dr P Naidoo | Non-executive director |
| Mr A Singh | Chief Financial Officer (CFO) |

In attendance

| | |
|---------------------------|------------------------|
| Ms A van der Merwe | Board Secretary |
|---------------------------|------------------------|

APOLOGIES

| | |
|----------------------|---|
| Mr G Leonardi | Non-executive director |
| Ms S Daniels | Group Company Secretary & Interim Head: Legal & Compliance ("GCS") |

*For part of the meeting

1. OPENING**1.1 Welcome**


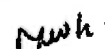
The Chairman welcomed everyone to the special meeting of the Board that had been called at short notice to discuss the matter concerning the early retirement of Mr Brian Molefe and the recent media statement released by the Minister of Public Enterprises.

1.2 Apologies and quorum


The apologies of Mr Leonardi and Ms Daniels were noted. It was confirmed that a quorum was present and the meeting was declared duly constituted.

2. DECLARATION OF INTERESTS

No specific declarations were made in respect of the matter on the agenda.

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3. MATTERS FOR APPROVAL

3.1 Group Chief Executive (GCE): Early retirement

The Chairman requested the Board Secretary to read from the note prepared by the GCS which served as a reminder of the previous discussions by the Board concerning the possible options following the public announcement by the Minister of Public Enterprises that she did not agree with the Board's decision regarding the early retirement of the GCE, Mr Brian Molefe, and that she had requested the Board to revisit the matter and to put forward a palatable pension proposal.

It was confirmed from the note that at a meeting with the Minister on 26 April 2017, the Minister had been informed that:


- Based on the relevant rules of the Eskom Pension and Provident Fund (EPPF) there was no alternative pension proposal in order for the GCE to retire early and should Eskom wish for the GCE to retire early, Eskom would have to pay for the pensionable service as per the rules of the EPPF.
- Eskom had paid the relevant amount to the EPPF in terms of the rules of the EPPF
- The Board was of the opinion that it had acted within the rules of the EPPF and Eskom's Memorandum of Incorporation and that its actions had been reasonable and rational considering all the factors and dynamics at the time.
- The office of the Minister had been kept abreast of developments at all material times.
- A number of options had been considered by the Board and, based on legal advice received, it was noted that the Board would have no option but to rescind its decision in November 2016 to accept the application for early retirement made by the GCE.
- In view of this, and in the interest of Eskom and all concerned, the preferred option would be a rescission of the previous decision to approve the early retirement application and for the GCE to return to his position within Eskom and the Board.

The meeting discussed the different options and it was agreed that, considering the legal risks associated with all options other than the rescission, the Board was of the view that the GCE should be engaged on the basis of a rescission of the Board's prior decision to accept his application for early retirement. It was furthermore agreed that Mr Khoza and Ms Klein would be mandated to engage Mr Molefe on behalf of the Board to obtain his consent to the Board's rescission of its earlier decision.

The meeting confirmed that considering that it did not have the support of its principal for the approval of the early retirement application and the fact that there were legal risks



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associated with all the other options, the proposed option would be a fair and clean solution in the interest of all concerned. A legal process would introduce substantial and extended uncertainty which was not in the interest of Eskom. Mr Khoza also pointed out that the Board had in fact not expected the application for early retirement and although it had been accepted, this was in fact a surprise as his sudden departure was not actually regarded as being in the interest of Eskom.

Ms Mabude joined the meeting.

Ms Klein provided a summary of the discussion to Ms Mabude, confirming that the Board was in support of the option of a rescission of the approval of the early retirement application.

It was confirmed that following the engagement with Mr Molefe and in the event of him being in agreement, then:


- the Minister of Public Enterprises would be informed accordingly;
- an appropriate media release would be prepared and circulated for input from Board members, including Mr Molefe; and
- a formal legal opinion addressing and confirming the appropriateness of this option would be prepared.

In the event of the GCE not being in agreement, the Board would be advised accordingly and would reconvene to discuss the way forward.

The Chairman requested Mr Khoza and Ms Klein to meet with Mr Molefe as soon as possible and to report back to the Board, via the Chairman, on the outcome of the discussions. It was agreed that the GCS would be requested to prepare a letter for Mr Molefe to sign, should he agree with the proposal. In the interim, the imminent meetings forming part of the recruitment process for a new GCE would be postponed until further notice. Ms Klein requested the CFO to convey the Board's decision to the GCS and to ensure, with the GCS, that all legal requirements to give effect to this decision were properly dealt with.

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It was again noted that considering the Minister's response to the matter, the Board had no option but to rescind its original decision to accept the early retirement application. The meeting requested Ms Klein and Mr Khoza to also brief the interim GCE, if necessary, following the engagement with Mr Molefe.


The meeting discussed the administrative and legal implications of the consensual rescission option. A member commented that the GCE had in fact not resigned but had applied for early retirement. The fact that the Board's decision to approve the application would now be rescinded would mean that the status quo would prevail. In response to a question from Ms Klein regarding the possible impact of this matter on the CIPC enquiry, the CFO confirmed that the GCS had submitted the necessary information to CIPC to confirm that the Board had been applying its mind to all material matters in fulfilling its fiduciary and statutory duties to Eskom.

IT WAS RESOLVED THAT:

- 3.1.1 the Board elects to rescind the decision to approve the application in November 2016 of the Group Chief Executive, Mr Molefe, for early retirement ("the application");
- 3.1.2 Mr Khoza and Ms Klein be and are hereby mandated on behalf of the Board to engage with Mr Molefe in an attempt to procure his return as Group Chief Executive of Eskom with immediate effect and to thereafter report to the Chairman on the outcome of the engagement at their earliest convenience;
- 3.1.3 In the event of Mr Molefe agreeing to return as Group Chief Executive of Eskom with immediate effect, the Minister of Public Enterprises be informed accordingly and all administrative, legal and public relations implications and requirements be appropriately addressed; and
- 3.1.4 In the event of Mr Molefe refusing to return as Group Chief Executive of Eskom with immediate effect the Board would enforce its rights following its decision to rescind its approval in respect of the application and would meet to discuss all implications of the processes (legal and other) that would have to follow.

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4. CLOSURE

The Chairman thanked the members for their participation and declared the meeting closed.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE



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"ESK14"

REINSTATEMENT AGREEMENT

between

ESKON HOLDINGS BOO LIMITED

and

BRIAN MOLEFE

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Molefe

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2 PARTIES

2.1 The Parties to this Agreement are –

2.1.1 **ESHOM HOLDINGS SOC LIMITED;** and

2.1.2 **BRIAN MOLEFE**

2.2 The Parties agree as set out below.

2 INTERPRETATION

In this Agreement –

2.1 "Agreement" means this replacement agreement;

2.2 "Esdom" means Esdom SOC Holdings Limited, a juristic body created by virtue of the Esdom Act, No. 40 of 1987, as amended from time to time, having its head office at Magsweil Park, Magsweil Drive, Sunninghill;

2.3 "Esdom Pension and Provident Fund" means a pension fund established by the Pension Funds Act, 24 of 1956 which came into operation on 1 January 1980 and was registered on 21 April 1988;

2.4 "Molefe" means Brian Molefe with identity number 6812285776000;

2.5 "Parties" means the parties to this Agreement;

2.6 "Principal Agreement" means the employment agreement signed between the Parties on 7 March 2016 relating to Molefe's appointment as Group Chief Executive of Esdom, a copy of which is annexed hereto marked "A"; and

2.7 words and phrases defined in the Principal Agreement or in the annexure to the Principal Agreement will bear the same meanings hereto.

3 INTRODUCTION

3.1 The Parties entered into the Principal Agreement;

3.2 On 11 November 2016, Molefe applied for early retirement. A copy of Molefe's early retirement application is attached marked "B".

3.3 On 24 November 2016, Esdom issued a letter accepting Molefe's early retirement. A copy of the acceptance letter is attached marked "C" ("Retirement Agreement").

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 Bng
 Mark.

J.

Page 3

3.4 The Board has elected to rescind the decision to approve Moleto's application for early retirement.

3.5 The Parties accordingly agree as set out herein.

4 PRINCIPAL AGREEMENT

For the avoidance of doubt, the Principal Agreement shall continue on its terms.

5 RESUMPTION OF DUTIES

Moleto shall resume his duties in terms of the Principal Agreement on 16 May 2017. Edison shall take all administrative steps necessary to give effect to this Agreement.

6 REPAYMENT OF MONIES BY MOLETO TO THE FUND

Moleto agrees to pay to the Fund all amounts due to the Fund which were paid to him pursuant to the Fundament Agreement by no later than 30 November 2017.

7 PERIOD BETWEEN 1 JANUARY 2017 TO 15 MAY 2017

The period between 1 January 2017 and 15 May 2017 will be regarded as unpaid leave.

8 WHOLE AGREEMENT

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no understanding, representation, term or condition relating to the subject matter of this Agreement not incorporated herein shall be binding on the Parties.

9 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

10 SIGNATURES

10.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

10.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.




M. Edison
Moleto

Page 6

10.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

10.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at *Sumnerville* on 11 May 2017.

For and on behalf of
EUKOM HOLDINGS SOC LIMITED

[Signature]
Signature
of BO Ngubane
Chairman

SIGNED at *Cape Town* on 11 May 2017.

[Signature]
Signature
Mr BM Abolola

M.K
[Signature]
w.k.

[Signature]

"ESK15"



Mr Brian Mplafe
ID 6612285778080

Dear Brian

YOUR EARLY RETIREMENT

- 1 The above matter has reference.
- 2 With effect from 1 October 2016, you were appointed as Eskom Holdings SOC Limited's ("Eskom") Group Chief Executive.
- 3 An employment agreement was signed by the parties on 7 March 2016 ("the employment agreement").
- 4 On 11 November 2016, you requested the Eskom Board to approve your application for early retirement in terms of the Eskom Pension and Provident Fund Rules ("Rules") read in conjunction with People and Governance Committee resolution dated 9 February 2016. You further indicated that your last day of service would be 31 December 2016.
- 5 Eskom issued a letter accepting your application for early retirement on 24 November 2016 ("the Retirement Agreement").
- 6 The Board of Eskom has resolved to rescind the Retirement Agreement. Consequently, the Board tenders resumption of your duties as Group Chief Executive Officer by 16 May 2017, on the basis set out in the re-employment agreement signed between us.

Head Office
Mogale City
PO Box 1001
Johannesburg 2001 SA
Tel 437 11 800 800 Fax 437 11 800 800
Eskom Holdings SOC Ltd Reg No 2006/000000

M.K
Berg
Tunde

7 - Should the terms of this proposal be acceptable to you, kindly sign a copy of this letter and return to the Company Secretary by close of business on the 12 May 2017.

Yours sincerely

Regina

Dr BB Ndlovu

CHAIRMAN

Date: 11/05/17

I ACCEPT THE TERMS OF THIS LETTER READ TOGETHER WITH MY EMPLOYMENT AGREEMENT SIGNED ON 7 MARCH 2016 AND THE REINSTATEMENT AGREEMENT SIGNED ON 12 MAY 2017.

[Signature]
By BM Molefe
GROUP CHIEF EXECUTIVE
Date: 11. 5. 17.

J.

M.K
[Signature]
M.K.

"ESK16"

STATEMENT

On Wednesday 2 November 2016, a report entitled 'State of Capture' prepared by the former Public Protector, Advocate Thuli Madonsela, was released.

The report did not make any findings. Instead it made what were termed "observations", based, (the report acknowledged), on an investigation not completed. It deferred a proper investigation to a commission of inquiry to be established at a future date. The outgoing Public Protector has directed the President – in whom the Constitution vests the power to appoint commissions of inquiry – to appoint one, and further directed the Chief Justice to designate a particular judge to head it.

It is a matter for regret that the report was prepared in haste to meet a deadline related to the Public Protector's own departure from office. That her office continues, as all State offices do, and that any uncompleted function is completed by a successor in that office, was not a consideration in the report.

"Observations" made in the report relating to, inter alia, my conduct, are in material respects inaccurate, based on part-facts or simply unfounded. What the previous Public Protector has done is not herself to investigate to completion, or to allow her office to complete what she insisted too late to complete herself. She has also determined on recording "observations" without, in crucial respects, putting intended harmful disclosures to me first – as she was by law required to do. She has effectively deferred my constitutional right to be heard to a future date, and to a further body, which she has ordered others to assemble.

If such a body is indeed by law to be assembled, and carry out the task, it will not be for some time – as recent experience indicates.

In the meanwhile harm is done – to the institution it has been my honour to lead in the most difficult times, to its reputation and to my own. I say nothing of the harm, too, to others close to me.

I am confident that, when the time comes, I will be able to show that I have done nothing wrong and that my name will be cleared. I shall dedicate myself to showing that an injustice has been done by the precipitate delivery of 'observations', following an incomplete

Page 1 of 2



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investigation, which the former Public Protector has drawn back from calling 'findings'. The truth will out.

I have, in the interests of good corporate governance, decided to leave my employ at Eskom from 1 January 2017. I do so voluntarily; indeed, I wish to pay tribute to the unfailing support I have had since I took up office from the chairman, the Board and with those with whom it has been my privilege to work. Together we brought Eskom back from the brink.

I will take time off to reflect before I decide on my next career move.

I wish to reiterate that this act is not an admission of wrongdoing on my part. It is rather what I feel to be the correct thing to do in the interests of the company and good corporate governance.

I wish to thank the shareholder representative, Ms Lynn Brown, the board, the executive team and all Eskom employees for their hard work and guidance in steering the company out of very difficult times during the twenty months that I was privileged to be the Group Chief Executive.

I go now, because it is in the interests of Eskom and the public it serves, that I do so.

Brian MOLEPE

11 November 2016

M.K

2017/05/15 02:49 P1A

2016



"ESK17"

MEDIA STATEMENT

Eskom GCE Brian Molefe voluntarily steps down

Friday, 11 November 2016: It is with a great sense of loss and regret that the Board of Eskom announces a decision by Eskom Group Chief Executive Brian Molefe to step down in the interest of good corporate governance.

In an effort to clear his name following the release of former Public Protector Thuli Madonsela's report on her "observations" about the so-called state capture, Mr Molefe has decided to voluntarily step down to reflect and take time off.

Eskom Chairperson Baldwin Ngubane said the decision taken by Mr Molefe was regrettable but understandable.

Since joining Eskom in April 2015, Mr Molefe and his executive management team have turned around the company's operational and financial performance, with 15 months of no load shedding, the impact of which has been enjoyed by every South African citizen. The improved performance of the power generating units coupled with additional capacity from some of our new build projects has resulted in a stable power system, with excess capacity being exported to neighbouring states.

The company's liquidity position has also improved significantly, with liquid assets increasing by 81.6% from R24.1 billion a year ago, to R43.8 billion at 30 September 2016 in the face of CPI growth reported to be 5.1% as at 1 April 2016. The group has access to adequate resources and facilities to continue as a going concern for the foreseeable future.

The Eskom Board sincerely thanks Brian Molefe for his relentless dedication to turning Eskom around, solidifying a capable executive team and putting it on a sound growth trajectory.

Eskom will soon be announcing the interim leadership arrangements once agreed with our Shareholder Representative, the Honourable Minister Lynne Brown.

ENDS

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 Cell: +27 82 806 7275
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 Email: media@eskom.co.za

M.K
 Big
 work

"252"
"BN2"

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|---|---------------------------|---------------------|------------------|-----|---|
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| | | Review Date | February 2020 | | |

EXTRACT FROM THE MINUTES OF BOARD OF DIRECTORS MEETING 05/2017/18 HELD ON 2 JUNE 2017 AT THE HUVO NKULU BOARDROOM, MEGAWATT PARK, AT 8h30

The Board of Directors received a letter from the Minister dated 31 May 2017. A copy of the letter is attached marked 1.

In terms of this letter, the Minister has directed the Board to "rescind its decision to re-instate Mr Molefe as the Group Chief Executive of Eskom".

The Minister incorrectly made reference to a letter dated 17 February 2017. The letter that was sent to the Minister was 11 May 2017.

In giving effect to and on the basis of the Minister's directive contained in the letter dated 31 May 2017, it is resolved:

1. That the resolution of the Board of Directors taken on 2 May 2017 is rescinded.
2. That the Reinstatement Agreement concluded between Mr Molefe and Eskom on 11 May 2017 be rescinded.

It is therefore noted that in consequence, Mr Molefe is no longer the Group Chief Executive of Eskom and will no longer serve as a director on the Board of Eskom.

CERTIFIED AS A TRUE EXTRACT



S Daniels (Ms)
GROUP COMPANY SECRETARY
Date: 01/06/2017

STRICTLY CONFIDENTIAL

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"BN3"



Brian Molefe
769 Camelford Road
Cornwall Hill Estate
IRENE

Dear Brian

ESKOM HOLDINGS SOC LIMITED / YOUR POSITION

1. In terms of a letter dated 31 May 2017, the Minister of Public Enterprises has directed the Eskom Board to rescind its decision "to reinstate Mr Molefe as the Group Chief Executive of Eskom". A copy of the letter is attached hereto.
2. You were invited to the urgent meeting of the Board held on 2 June 2017. The item on the agenda was the letter from the Minister of Public Enterprises dated 31 May 2017. You were asked to recuse yourself as you have a conflict of interest. You duly did.
3. In giving effect to the directive of the Minister of Public Enterprises, the Board has resolved to rescind the Reinstatement Agreement concluded between you and Eskom on 11 May 2017, as a consequence of which, you are, effective immediately, no longer the Group Chief Executive of Eskom.
4. I enclose for your records a copy of the Board resolution.

Yours sincerely

B. Ngubane

Dr BS Ngubane
CHAIRMAN

Date: 02/06/17

Received.

[Signature]
2. 6. 17.

Head Office
MegaVest Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 600 2030 Fax +27 11 600 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/016627/SC

on Bug

Mark.

[Signature]

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**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN PRETORIA)**

Case no.: J1276/17

In the matter between:

BRIAN MOLEFE

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

FILING SHEET

Herewith the Applicant's Answering Affidavit to the Economic Freedom Fighters' Intervention Application for service and filing.

DATED AT ILLOVO ON THIS THE 15th DAY OF JUNE 2017.

EFG INC

Applicant's Attorneys

28 Fricker Road

Illovo

Johannesburg

Tel: 011 341 0510

Email: barry@efglaw.co.za / janita@efglaw.co.za

Ref: Mr B Farber/JC

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO: **CLIFFE DEKKER HOFMEYR INC**
First Respondent's attorneys
Email: Aadil.patel@cdhlegal.com; Taryn-Jade@Moonsamy@cdhlegal.com

Service per email

AND TO: **THE MINISTER OF PUBLIC ENTERPRISES**
Second Respondent
C/O OFFICE OF THE STATE ATTORNEY – MR PETER SELEKA
Email: Pseleka@justice.gov.za; ministry.registry@dpe.gov.za;
kim.davids@dpe.gov.za; masenya.selatswa@dpe.gov.za

Service per email

AND TO: **ECONOMIC FREEDOM FIGHTERS**
C/O KWINANA & PARTNERS INC
Email: Thabo@kp.co.za; Tendai@kp.co.za
Ref: Mr T Kwinana

Service per email

AND TO: **DEMOCRATIC ALLIANCE**
C/O MINDE SCHAPIRO & SMITH INC
Email: Elzanne@mindes.co.za
Ref: Elzanne Jonker

Service per email

IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN JOHANNESBURG)

CASE NO: J1276/17

In the matter between;

BRIAN MOLEFE

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

ECONOMIC FREEDOM FIGHTERS

Intervening Party

**B MOLEFE'S ANSWERING AFFIDAVIT TO ECONOMIC FREEDOM FIGHTERS'S
INTERVENTION APPLICATION**

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and state as follows:

1. I am an adult male, having my place of residence at no. 409, Kelly Bray Lane, Cornwall Hill Estate, Irene, Pretoria. I am the applicant and deponent to the founding affidavit in the main application launched on Monday 5 June 2017 ("*the main application*").

[Handwritten mark]

[Handwritten signature]

2. The facts set out in this affidavit are within my personal knowledge, unless the context indicates to the contrary. They are to the best of my knowledge and belief both true and correct.
3. I have read the affidavit in support of intervention to the main application deposed to by Mr Floyd Shivambu ("**Shivambu**"), comprising also the Economic Freedom Fighters' ("**the EFF**") answer to the allegations set out in my founding affidavit to the main application.
4. I respond to the intervention application as set out below, dealing only with such portions of the EFF affidavit that require a response. I address the balance of the allegations in the EFF affidavit dealing with the merits of the main application in a separate affidavit to follow. To the extent that any allegation made by the EFF is not specifically dealt with it is denied.
5. Before I address the allegations in the EFF affidavit *ad seriatim*, I deem it necessary to make a few observations of a general nature. This is necessary to place matters in their proper context and to demonstrate that the application for intervention is without basis. Not only has the EFF misconceived its position entirely, but it has approached this Court, not to vindicate matters of high principle, but to use this litigation as a convenient platform for political skirmishes.



6. At the outset of this affidavit it is important to be reminded of the fact that the relief sought in the main application is of a personal nature concerning a contractual matter arising out of the contract of employment that I concluded with Eskom on 7 March 2016 ("BM3" to the founding affidavit) and that speaks directly to the latter's breach thereof on 2 June 2017 when it elected to dismiss me summarily.
7. The EFF has no legal interest to intervene in the main application which concerns a private dispute between an employer and its employee. The constituency that the EFF represents has no interest in the outcome of the litigation between me and Eskom concerning the latter's breach of my contract of employment with Eskom.
8. Any interest which the EFF may have in its own name or in the manner alleged in paragraph 18 of Shivambu's founding affidavit at best lies in the pending High Court proceedings instituted by the DA and EFF respectively. It does not extend to the relief sought in this application.
9. In my founding affidavit, I refer to the High Court applications instituted by the DA and the EFF respectively, in which final orders were sought to review and set aside certain actions by Eskom and by the Minister concerning my position as Group Chief Executive of Eskom.

(17/11)



10. When these High Court applications were launched during May 2017, I held the position of Group Chief Executive of Eskom. This was accordingly the *status quo* when the respective High Court applications were launched.
11. My employment with Eskom was unlawfully terminated by Eskom on 2 June 2017 in the circumstances set out in my founding affidavit. This dismissal was a new occurrence, which materially altered the position that had existed when the DA and EFF launched their High Court applications. This change was not brought about by conduct on my part, but rather, was brought about by unilateral conduct on the part of Eskom which I contend was unlawful, as appears from my founding affidavit in the main application.
12. My application before this Honourable Court seeks to restore my employment position by declaring my summary dismissal to have been effected unlawfully.
13. In the event that I am successful in the main application before this Honourable Court, then the *status quo* will be exactly as it was before the unlawful termination of my employment on 2 June 2017. The DA and the EFF will still be entitled to proceed with their High Court applications (including seeking re-enrolment of Part A of their respective applications) with the consequence that even a successful outcome for me in the context of the main application leaves the position of both the DA and EFF undisturbed. They remain free to seek the

relief claimed in Part A and B of their respective High Court applications. This application does not alter that landscape.

14. Further, I have undertaken that pending the outcome of the main application, I will not attend at any Eskom site for the purposes of performing my employment duties. Eskom reciprocally does not require that I perform any employment duties. All of this is recorded in the High Court Order, "JS1" to the DA's founding affidavit in support of intervention.
15. In the circumstances, I respectfully submit that the EFF's attempt to intervene in the main application is not only frivolous and vexatious but an opportunistic attempt at securing a political advantage that has nothing to do with my unlawful dismissal by Eskom on 2 June 2017. The EFF simply has no interest in this application, and the outcome of the main application does not have adverse consequences for the EFF since should I be granted the relief sought in the notice of motion to the founding affidavit, it will do no more than restore the *status quo* as it existed before my unlawful dismissal without detracting from or diminishing the rights of the EFF to pursue its relief before the High Court.
16. When therefore seen for what it truly is, the EFF's intervention application is nothing more than a transparent attempt to prejudice my prospects of having my unlawful dismissal overturned, a right which every employee is entitled to vindicate before this Court. Should my employment status not be restored, then

it follows that much of the relief sought by the EFF in the High Court will be rendered moot. This is precisely the outcome that the EFF seeks to achieve, thereby avoiding the need to make out a case for the relief it seeks before the High Court.

17. This is the true purpose of the EFF's intervention. By intervening in this application, it seeks to avoid the onus resting upon it in the High Court application in convincing the Court of the merits in respect of both Part A and Part B of the relief sought. This is not only vexatious, but is an abuse of the process of this Honourable Court, as the EFF effectively seeks to convert my application aimed at restoring my employment status into a political battleground.

18. I now deal with the specific allegations in the affidavit in support of intervention. Allegations not dealt with should be taken as having been denied.

19. **Ad paragraphs 1 to 2**

Save to dispute that the contents of the founding affidavit are true and correct or within the personal knowledge of Shivambu, these allegations are not disputed.

20. **Ad paragraphs 3 to 6**

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I admit the description of the parties contained in these paragraphs. I reside at 409, Kelly Bray Lane, Cornwall Hill Estate.

21. **Ad paragraphs 7 to 8**

Save to admit that I brought the main application on an urgent basis to have my dismissal declared unlawful and void *ab initio*, I deny the allegations in these paragraphs. As already indicated a successful outcome for me in this application has no adverse consequence for the EFF in the pending High Court application and it remains open to the EFF to pursue the relief claimed in its notice of motion before the High Court. I reject any suggestion that this application is an attempt to undermine the EFF's High Court application.

22. **Ad paragraph 9**

22.1. I deny these allegations and refer the Court to what is stated in the founding affidavit concerning the circumstances under which I resumed my employment with Eskom. What the EFF is really contending for is a departure from accepted principles of contract law, applied on a daily basis before this Court, ostensibly on the basis that it deems my continued employment with Eskom politically unacceptable.

- 22.2. Despite the EFF having raised unspecified concerns with regards to good corporate governance, ethics and what it terms my "glaring unsuitability", these allegations are made in an attempt to tarnish my reputation but in no way did it serve as a basis to justify my summary dismissal from Eskom's employ. These assertions are based on the untested observations contained in the State of Capture Report.
- 22.3. Like any other employee, I am entitled to the protection offered by the laws of this country. The fact that the EFF seeks my exit from the employ of Eskom through the review sought in the High Court does reduce my entitlement to insist on the enforcement of the laws of the Republic.
- 22.4. If my employer had concerns with my suitability for the job or any other issue that made my employment no longer desirable, it was incumbent upon Eskom to follow the legal process. It had no right to summarily dismiss me on 2 June 2017 and could not disregard my contractual rights. Save as aforesaid these allegations are denied.
23. **Ad paragraph 10 to 11**

I admit the allegations in this paragraph insofar as Shivambu has accurately recorded the terms of the Minister's directive. Save as aforesaid the allegations in paragraph 10 are denied. I admit the allegations in paragraph 11.

24. **Ad paragraph 12**

- 24.1. I deny the correctness of these allegations. The Minister's directive was an opportunistic and convenient afterthought following her meeting with officials of the African National Congress leadership as well as the Inter-Ministerial Committee, when she was instructed to have me removed.
- 24.2. As appears from my founding affidavit, her directive was a stark departure from the explanatory affidavit she filed before the High Court in response to the application brought by the DA, in which she indicated that based on her understanding of the facts, I would serve out the remainder of my original contract of employment. The Minister's sudden change of position simply does not pass muster and makes it abundantly clear that the decision to dismiss me was informed by political factors that were clearly not rooted in the law. Eskom similarly accepted in its answering papers before the High Court that I was validly employed.

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25. **Ad paragraphs 13.1 to 13.5**

- 25.1. This Honourable Court is not required to enquire into the so-called procedural defects or considerations referred to in paragraph 13. This Court is only called upon to pronounce on the lawfulness of my dismissal on 2 June 2017. The circumstances around my re-appointment constitutes an issue that is currently before the High Court and does not require this Court's consideration. It is not necessary for me to challenge any directive. My contractual rights sought to be enforced before this Court have their genesis in the contract of employment concluded with Eskom in March 2016.
- 25.2. The directive was contradictory of the previous stance adopted by the Minister and was neither valid nor binding on the Board. I dispute that there was any irregularity in my resumption of employment because of the common mistake as set out in my founding affidavit.
- 25.3. The Board's purported rescission of the Reinstatement Agreement was an unlawful repudiation of my employment contract which I do not accept. I was summarily dismissed by the Board without proper cause.
- 25.4. Having explained the circumstances in which my request for early retirement was managed, the chairman of the Eskom Board, Dr

gnd

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Ngubane notes that a resolution was passed by the Board to rescind the decision to approve this early retirement. He goes on to say the following in paragraph 37 ("BM13"):

"The consequence thereof was that the status quo had to be restored. The amounts paid out by Eskom on account of Molefe's "retirement" would have to be repaid to Eskom and, in order to restore the status quo, Molefe would resume his duties as Eskom Chief Executive." (Emphasis added)

- 25.5. In her affidavit the Minister, having referred to the options presented to her by the Eskom Board on 11 May 2017, indicated that as a result of the erroneous grant of early retirement, the situation would have to be rectified. The Minister says the following in paragraph 45.3 of her affidavit, which is annexed as "BM30":

"I also believed, on the strength of the legal advice received by Eskom and communicated to me and which I had no reason to doubt, that once the contract of early retirement had been mutually rescinded on the basis of an error, it would inevitably mean that the status quo would have to be restored."

(Emphasis added).

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25.6. Consequently, both the Eskom Board and the Minister have accepted the factual and legal position that, with effect from 15 May 2017, I resumed my duties as Group Chief Executive. This was the status of my employment before I was dismissed by the Eskom Board on 2 June 2017. It is this dismissal that I seek to challenge.

25.7. Contrary to the refrain adopted in paragraphs 13.4 to 13.5, there was nothing unlawful about the resumption of my employment with Eskom. It certainly did not constitute a new appointment, but amounted to a continuation of my employment on the basis of the contract of employment concluded in March 2016. Save as aforesaid these allegations are denied.

26. **Ad paragraph 14**

I admit that Eskom purported to terminate my employment on 2 June 2017. In having done so it acted in disregard of my contractual rights. Save as aforesaid these allegations are admitted.

27. **Ad paragraph 15 including paragraph 15.1**

I admit the correctness of the allegations in paragraph 15.1. It was precisely for this reason that it was necessary to enrol this application heard on Monday 5

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June 2017. The immediate urgency was however addressed through the High Court Order ("JS1" to the DA's founding affidavit in support of intervention) which was agreed to by all parties concerned.

28. **Ad paragraph 15.1.1**

I deny the allegations in this paragraph which are absurd. I have a direct interest in the outcome of the relief sought by both the DA and EFF in the High Court proceedings including Part A of the relief. To suggest as Shivambu does that my participation in Part A of the High Court proceedings is "unnecessary" is a gross misstatement of the legal position.

29. **Ad paragraph 15.2 including paragraph 15.2.1**

I admit the first sentence of paragraph 15.2 insofar as Shivambu has correctly referred to my founding affidavit in the main application. I have never suggested that I performed the duties of a member of the National Assembly and that of the Eskom Chief Executive at the same time. My acceptance of the former position was based upon the common mistake that I was entitled to early retirement. When this was found to be wrong, I resumed his employment with Eskom on the basis of the facts set out more fully in my founding affidavit in the main application. If, due to an error such as that which occurred in the instant case, I became a member of the National Assembly while still employed by

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Eskom, then this is a matter for the National Assembly. It certainly did not vitiate my employment with Eskom. Save as aforesaid these allegations are denied.

30. **Ad paragraph 15.3 including paragraph 15.3.1**

I admit the first sentence of this paragraph. The conclusion of the Reinstatement Agreement principally regulated the consequences arising out of the implementation of my early retirement, which was at a time prior to Eskom or me realising that the early retirement agreement was void. The Reinstatement Agreement regulated the unwinding of the financial consequences of Eskom and me having performed in terms of the early retirement agreement, at a time when both parties thought it was valid. Eskom was not entitled to rescind the reinstatement agreement. In having elected to enter into the Reinstatement Agreement, Eskom exercised an election to honour the contract of employment concluded with me in March 2016 and in so doing divested itself of any right which it may have had to dismiss me. Save as aforesaid these allegations are denied.

31. **Ad paragraph 15.4 including paragraph 15.4.1**

I admit paragraph 15.4 insofar as it is consistent with what is stated in my founding affidavit filed in the main application. It is not necessary for me to challenge the directive. My complaint lies with my unlawful termination, which

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B. J.

by its very nature involved a decision to dismiss me. These are in any event matters for legal argument that do not concern the EFF as it was not a party to my contract of employment with Eskom.

32. **Ad paragraph 15.5 including paragraph 15.5.1**

I admit the allegations in paragraph 15.1. The allegations in paragraph 15.5.1 are denied and premised on an incorrect understanding of the legal position. I do not seek reinstatement as understood in law. The appropriate relief in this instance given that my complaint rests on unlawfulness is that my unlawful dismissal should be nullified. It is trite that an employee whose dismissal is invalid had never been dismissed. An employee whose dismissal is invalid does not need an order of reinstatement. Save as aforesaid I deny the allegations in these paragraphs.

33. **Ad paragraph 16**

I deny the correctness of the allegations contained in this paragraph. Once the early retirement agreement had been mutually rescinded on the basis of a common error, it inevitably meant that the *status quo* would have to be restored. As I have pointed out in my founding affidavit, my original contract of employment did not come to an end. This flows from the fact that the early retirement agreement I had reached with Eskom when I left 31 December 2016

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was premised on the mistaken understanding by both Eskom and me that I was eligible for and taking early retirement as contemplated in the EPPF.

34. **Ad paragraphs 17 to 18**

34.1. I deny the allegations in these paragraphs. The EFF in reality seeks to frustrate my application by raising an extraneous matter, not in issue between the direct parties in this application, which will be ventilated in the High Court in due course.


34.2. I repeat that the grant of relief in my favour in this application will do no more than to restore the *status quo* to what it was prior to my unlawful dismissal on 2 June 2017. There is no link between my application and the pending applications in the High Court, save as recorded in the order of Basson J. I seek an order against Eskom for my reinstatement as Group Chief Executive, which is a matter of employment law, between myself and my employer. In the High Court, the EFF seeks an order setting aside the decision of Eskom to "re-appoint" me to the position of Group Chief Executive.

34.3. This relates to my resumption of employment on 15 May 2017, which resumption is accepted, factually and legally by Eskom and by the Minister. I repeat that the circumstances of my resumption of

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employment is not a matter before this Honourable Court, but is an issue that can be ventilated before the High Court in the fullness of time. The EFF was not cited in this application because it has no legally recognised interest in a matter which concerns the enforcement of my employment contract.

35. I therefore ask that the intervention application be dismissed with costs including the costs occasioned by the employment of two counsel.


BRIAN MOLEFE

I certify that the deponent knows and understands the contents of the foregoing Affidavit which was signed and attested to at the undermentioned address on this 15 day of JUNE 2017 in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.

Lyttelton 2017-06-15 12:01
SAPS
Deputy Justice Meehan
SAPS Lyttelton
Brian Molefe
Capt

cap PJ
Lyttelton

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2017-06-15
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

BA 301 ~~123~~

into an early retirement with Eskom. It would not have been proper or fair of me to contend that Mr Molefe had resigned unilaterally after having been appraised of the true facts.

- 45.2 In not supporting a 30-million-rand pension pay out to Molefe and in requesting the Board to rescind its decision and to try to resolve the matter I was acting in the best interest of the country.
- 45.3 I also believed, on the strength of the legal advice received by Eskom and communicated to me and which I had no reason to doubt, that once the contract of early retirement had been mutually rescinded on the basis of an error it would inevitably mean that the status quo would have to be restored.
- 45.4 I was not party to the reinstatement agreement.
- 45.5 I acted with prudence when I stated in LB 12 that the Board should reconsider the contract that resulted in the previous pension arrangement as I do not want this issue to resurface in future if there were promises made to Mr Molefe when he contracted with the Board and which contract I was not

y/m/d

K. M. M.

**IN THE LABOUR COURT OF SOUTH AFRICA
(HELD IN PRETORIA)**

Case no.: J1276/17

In the matter between:

BRIAN MOLEFE

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

FILING SHEET

Herewith the Applicant's Answering Affidavit to the Democratic Alliance's Intervention Application for service and filing.

DATED AT ILLOVO ON THIS THE 15th DAY OF JUNE 2017.

EFG INC
Applicant's Attorneys
28 Fricker Road
Illovo
Johannesburg
Tel: 011 341 0510
Email: barry@efglaw.co.za / janita@efglaw.co.za
Ref: Mr B Farber/JC

TO : THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO: **CLIFFE DEKKER HOFMEYR INC**
First Respondent's attorneys
Email: Aadil.patel@cdhlegal.com; Taryn-Jade@Moonsamy@cdhlegal.com

Service per email

AND TO: **THE MINISTER OF PUBLIC ENTERPRISES**
Second Respondent
C/O OFFICE OF THE STATE ATTORNEY – MR PETER SELEKA
Email: Pseleka@justice.gov.za; ministry.registry@dpe.gov.za;
kim.davids@dpe.gov.za; masenya.selatswa@dpe.gov.za

Service per email

AND TO: **ECONOMIC FREEDOM FIGHTERS**
C/O KWINANA & PARTNERS INC
Email: Thabo@kp.co.za; Tendai@kp.co.za
Ref: Mr T Kwinana

Service per email

AND TO: **DEMOCRATIC ALLIANCE**
C/O MINDE SCHAPIRO & SMITH INC
Email: Elzanne@mindes.co.za
Ref: Elzanne Jonker

Service per email

IN THE LABOUR COURT OF SOUTH AFRICA

(HELD IN JOHANNESBURG)

Case no.: J1276/17

In the matter between:

BRIAN MOLEFE

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

**B MOLEFE'S ANSWERING AFFIDAVIT TO DEMOCRATIC ALLIANCE'S
INTERVENTION APPLICATION**

I, the undersigned,

BRIAN MOLEFE

do hereby make oath and say that:

1. I am the deponent to the founding affidavit. the facts set out in this affidavit are within my personal knowledge unless otherwise stated, and are to the best of my belief true and correct.

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[Handwritten initials]

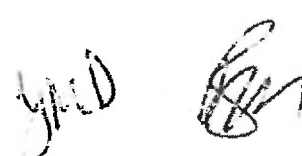
2. I have read the affidavit in support of intervention, comprising also its answer to my application before this Court. I respond to the intervention application as set out below, dealing only with such portions of the DA affidavit as require a response. I will answer the balance of the DA affidavit dealing with the merits of my application, in a separate affidavit to follow shortly. To the extent that any allegation made by the DA is not specifically dealt with, this is denied.

3. At the outset I say the following:

3.1 My application before this Honourable Court concerns a personal contractual matter arising out of the contract of employment that I concluded with Eskom on 7 March 2016 ("BM3" to the founding affidavit).

3.2 in my founding papers I refer to the High Court applications instituted by the DA and the EFF respectively, in which final orders were sought to review and set aside certain actions by Eskom and by the Minister concerning my position as Group Chief Executive of Eskom.

3.3. When these High Court applications were launched during May 2017, I held the position of Group Chief Executive of Eskom. This was accordingly the *status quo* when the respective High Court applications were launched.

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- 3.4. My employment with Eskom was unlawfully terminated by Eskom on 2 June 2017 in the circumstances set out in my founding affidavit. This dismissal was a new occurrence, which materially altered the position that had existed when the DA and EFF launched their High Court applications. This change was not brought about by conduct on my part, but rather, was brought about by unilateral conduct on the part of Eskom which I contend was unlawful. My application before this Honourable Court seeks to restore my employment position.
- 3.5. If I am successful in my application before this Honourable Court, then the *status quo* will be exactly as it was before my dismissal on 2 June 2017. The DA and the EFF will still be entitled to proceed with their High Court applications (including seeking re-enrolment of Part A of their respective applications). Further, I have undertaken that pending the outcome of my application in this Honourable Court, I will not attend at any Eskom site for the purposes of performing my employment duties. Eskom reciprocally does not require that I perform any employment duties. All of this is recorded in the High Court Order, "JS1" to the DA's founding affidavit.
- 3.6. In these circumstances the DA's attempt to intervene in my application for reinstatement is frivolous and vexatious. The DA has no interest in this application, and the outcome of this application cannot adversely

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affect the Das High Court application. As I have pointed out, success in my application for restoration of my employment will merely restore the *status quo* as it existed before.

3.7 The DA's attempt to intervene in my application is no more than an attempt to non-suit me in the High Court application in which it is the applicant. If I am not restored to employment, then much of the relief sought by the DA in the High Court will be rendered moot. This is the true purpose of the DA's intervention, whereby it seeks to avoid the onus resting upon it in its review application. This is not only vexatious, but is an abuse of the process of this Honourable Court. The DA seeks to convert my application into a political battle ground.

3.8. The suggestion that my application before this Honourable Court may result in overlapping or conflicting judgments of different Courts is both factually and legally unsound. If I were to be restored to employment (as I contend I should be) then the DA review application can proceed without obstacle or impediment.

4. I now deal with the specific allegations in the affidavit in support of intervention.

5. **Ad paragraphs 1 to 4**



Save to dispute that the contents of the founding affidavit is true and correct or within the personal knowledge of the deponent, these allegations are not disputed.

6. **Ad paragraphs 5 and 6**

I note these allegations. I dispute that the DA has any basis on which to intervene. The application is frivolous and vexatious.

7. **Ad paragraphs 8 and 9**

7.1 I admit the description of the DA but deny that there is any personal or public interest.

7.2. Save to point out that I reside at 409, Kelly Bray Lane, Cornwall Hill Estate, the allegations are admitted.

8. **Ad paragraph 10**

In terms of the Reinstatement Agreement I resumed my duties in terms of my contract of employment. This agreement principally regulated the financial implications of my early retirement.

9. **Ad paragraphs 11, 12 and 13**

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These allegations are not disputed.

10. **Ad paragraph 14**

I admit that the DA High Court application challenged the validity of the Reinstatement Agreement on the stated grounds. I deny that the grounds are correct.

11. **Ad paragraphs 15 and 16**

11.1 I admit that the Minister gave the directive to the Board of Eskom as set out in annexure "BM23" to my founding affidavit. This directive was contradictory of the previous stance adopted by the Minister and was neither valid nor binding on the Board. I dispute that there was any irregularity in my resumption of employment because of the common mistake as set out in my founding affidavit.

11.2. The Board's purported rescission of the Reinstatement Agreement was an unlawful repudiation which I do not accept. I was summarily dismissed by the Board without proper cause and contrary to the provisions of my contract of employment.

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12. Ad paragraph 17

These allegations are denied.

13. Ad paragraphs 18 and 19

It is deliberately misleading to suggest that my application seeks to challenge Eskom's rescission of an earlier decision to "reappoint" me as Group Chief Executive. My challenge is against Eskom's unlawful dismissal.

14. Ad paragraphs 20 and 21

14.1. Prior to 31 May 2017 Eskom and the Minister deposed to answering affidavits in the (now combined) High Court applications brought by the DA and the EFF. Excerpts from these affidavits are attached to my founding papers. Having explained the circumstances in which my request for early retirement was granted, the chairman of the Eskom Board, Dr Ngubane, notes that a resolution was passed by the Board to rescind the decision to approve this early retirement. He goes on to say the following in paragraph 37 ("BM13"):

"The consequence thereof was that the status quo had to be restored. The amounts paid out by Eskom on account of Molefe's "retirement" would have to be repaid to Eskom and, in



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order to restore the status quo, Molefe would resume his duties as Eskom Chief Executive. (Emphasis added)

- 14.2. In her affidavit the Minister, having referred to the options presented to her by the Eskom Board on 11 May 2017, indicated that as a result of the erroneous grant of early retirement, the situation would have to be rectified. The Minister says the following in paragraph 45.3 of her affidavit, which is annexed as "BM30":

"I also believed, on the strength of the legal advice received by Eskom and communicated to me and which I had no reason to doubt, that once the contract of early retirement had been mutually rescinded on the basis of an error, it would inevitably mean that the status quo would have to be restored."
(Emphasis added).

- 14.3. Consequently, both the Eskom Board and the Minister have accepted the factual and legal position that, with effect from 15 May 2017, I resumed my duties as Group Chief Executive. This was the status of my employment before I was dismissed by the Eskom Board on 2 June 2017. It is this dismissal that I seek to challenge.
- (S) (S)

- 14.4. The letter from Eskom dated 2 June 2017 ("BM1" to my founding affidavit) plainly amounted to a purported termination of an existing employment relationship. The DA's challenge to my resumption of employment is not an issue between me and Eskom in this court, nor (to the extent that the Minister will play any part in this application) an issue between me and the Minister. The DA seeks to frustrate my application by raising an extraneous matter, not in issue between the direct parties in this application, which will be ventilated in the High Court in due course. I repeat that the grant of relief in my favour in this application will do no more than to restore the *status quo* to what it was prior to my unlawful dismissal on 2 June 2017.
- 14.5. There is no inexplicable link between my application and the pending applications in the High Court. I seek an order against Eskom for my reinstatement as Group Chief Executive, which is a matter of employment law, between myself and my employer. In the High Court, the DA seeks to review the decision of Eskom "to appoint and/or reinstate" me to the position of Group Chief Executive; this relates to my resumption of employment on 15 May 2017, which resumption is accepted factually and legally by Eskom and by the Minister. I repeat that the circumstances of my resumption of employment is not a matter before this Honourable Court.
- 
- 

14.6. The DA was not cited in this application because it has no legally recognised interest in a matter which concerns my employment contract.

15. **Ad paragraphs 22 and 23**

I was dismissed on Friday 2 June 2017 shortly before the commencement of Part A of the High Court applications enrolled for hearing on 6 and 7 June 2017. I was accordingly required to act with extreme urgency and I placed all relevant facts before the Court. The timing of this application is no concern of the DA.

16. **Ad paragraphs 24 and 25**

I refer to what is stated above concerning the applications and deny what is contrary to what I have already stated. The allegations concerning public funds and escalating costs are self-serving, and are no more than a consequence of the DA's interference in a matter that does not concern it.

17. **Ad paragraphs 26 and 27**

I am aware of the letter from the DA's attorneys, 'JS2' The DA seeks to influence this Honourable Court' decision by its reference to irrelevant material and inadmissible evidence which characterises its papers in the High Court. My attorneys responded to this letter on 25 May 2017 ("JS3") in which they pointed

to the attempt by the DA (and the EFF) to capitalise on events between myself and Eskom on the hope of being relieved of the challenge of succeeded in their High Court applications.

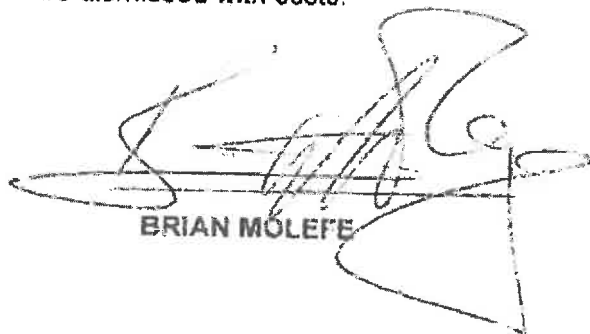
18. **Ad paragraphs 28 to 33**

I refer to what is stated above and deny all contrary assertions. A finding by this Honourable Court will in no sense pre-determine any issue pending before the High Court. To the contrary, this will merely restore the *status quo*. The prejudice alleged by the DA is non-existent and contrived. I persist with my application.

19. **Ad paragraphs 34 and 35**

My application is urgent for the reason that I have referred to in my founding and supplementary founding affidavits. The DA's application is frivolous and no proper case is made out for intervention.

20. I ask that the intervention application be dismissed with costs.


BRIAN MOLEFE

I certify that the deponent knows and understands the contents of the foregoing Affidavit which was signed and attested to at the undermentioned address on this 15 day of JUNE 2017 in accordance with the provisions of GN R1258 dated 21 July 1972 as amended by Regulation No. 1648 dated 19 August 1977, by GN R1428 of 11 July 1980 and by GN R744 of 23 April 1982.

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COMMISSIONER OF OATHS

[Handwritten notes:]
Lytelton 11/06/15
SAPS
Rusikane Avenue
Capetown

SUID-AFRIKAANSE POLISIEDIENS
SAPS LYTTELTON
2017-06-15
CLIENT SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

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into an early retirement with Eskom. It would not have been proper or fair of me to contend that Mr Molefe had resigned unilaterally after having been appraised of the true facts.

45.2 in not supporting a 30-million-rand pension pay out to Molefe and in requesting the Board to rescind its decision and to try to resolve the matter I was acting in the best interest of the country.

45.3 I also believed, on the strength of the legal advice received by Eskom and communicated to me and which I had no reason to doubt, that once the contract of early retirement had been mutually rescinded on the basis of an error it would inevitably mean that the status quo would have to be restored.

45.4 I was not party to the reinstatement agreement.

45.5 I acted with prudence when I stated in LB 12 that the Board should reconsider the contract that resulted in the previous pension arrangement as I do not want this issue to resurface in future if there were promises made to Mr Molefe when he contracted with the Board and which contract I was not

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 3305/ 17

In the matter between:

DEMOCRATIC ALLIANCE

APPLICANT

and

**THE MINISTER OF PUBLIC ENTERPRISE
ESKOM HOLDINGS LIMITED**

**1ST RESPONDENT
2ND RESPONDEND**

BRIAN MOLEFE

3RD RESPONDENT

FILING NOTICE

DOCUMENTS:

FIRST RESPONDENT'S EXPLANATORY AFFIDAVIT

ON ROLL:

FILED BY:

1ST RESPONDENT'S ATTORNEY

THE STATE ATTORNEY, PRETORIA

(Attorney with the right of appearance
in terms of section 4 (2) of Act 62 of 1995)

316 SALU BUILDING

CNR FRANCIS BAARD & THABO SEHUME STREET

GROUND FLOOR

PRIVATE BAG X 91

PRETORIA, 0001

REF: 3594/2015/Z65/jb

TEL: (012) 309 1545/1500

FAX: (012) 309 1649/50

DIRECT FAX: 086 629 0146

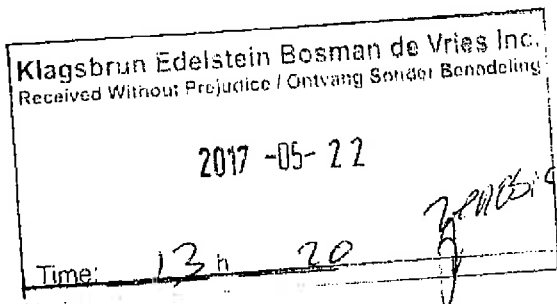
E-MAIL: Pseleka@justice.gov.za

ENQ: G P SELEKA

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

AND

TO: APPLICANT'S ATTORNEY
MINDE SHAPIRO & SMITH INC
C/O JOHAN DE WET ATTORNEYS
TIGER VALLEY OFFICE PARK
BUILDING NUMBER 2
CNR WILLIE VAN SCHOOR & OLD OAK ROADS, BELVILLE
TEL: (021) 918 9000
E-MAIL: elzanne@mindes.co.za
REF: ELZANNE JONKER
C/O KLAGSBRUIN EDELSTEIN BOSMAN DE VRIES INC
220 LANGE STREET
NIEUW MUCKLENEUK
PRETORIA
TEL: (012) 452 8900
FAX: (012) 452 8901
EMAIL: venashan@kebd.co.za
REF: R NYAMA/VS/HS001003



COPY HEREOF RECEIVED ON

DATE:

TIME:

APPLICANT'S ATTORNEY

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 33051/17

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF PUBLIC ENTERPRISES

First Respondent

ESKOM HOLDINGS LIMITED

Second Respondent

BRIAN MOLEFE

Third Respondent

FIRST RESPONDENT'S EXPLANATORY AFFIDAVIT

I, the undersigned,

LYNETTE BROWN

do hereby make oath and state that:

1. I am an adult female currently serving as the Minister of Public Enterprises. I am the first respondent in this matter.
2. The facts set out in this affidavit are within my own personal



knowledge, unless otherwise stated or apparent from the context. These facts are, to the best of my knowledge and belief, both true and correct.

3. Where I make legal submissions, I do so on advice of my legal representatives.
4. I am duly authorised to depose to this affidavit on behalf of the First respondent, being the Minister of Public Enterprises.

NATURE OF THIS AFFIDAVIT

5. The purpose of this affidavit is to explain the context in which I have decided to abide the decision of the Court in this matter with respect to part A of the notice of motion. I have not yet made any firm decision with respect to how I intend to deal with part B of the notice of motion and reserve my rights to deal with part B in the normal course. I have been advised that as Part B has been brought in the normal course, I do not have to make any firm decision at this stage on that part.
6. On 15 May 2017, I received the notice of motion and founding affidavit in the above matter. Given the urgency, and to gain a proper



- 3 -

opportunity to adopt a considered position pursuant to legal advice, my office instructed the State Attorney to file a notice of intention to oppose.

7. I pause to point out that the parties in terms of paragraph 1 on page 3 of the Notice of Motion were afforded an opportunity to file the notice of intention to oppose, if any, by Wednesday 17 May 2017. I attach a copy of the notice of intention to oppose.
8. Having taken full advice on the matter, I have instructed my legal representatives to withdraw the notice of intention to oppose part A of the notice of motion. In this regard, a notice of withdrawal of opposition of Part A will be delivered along with this affidavit. Naturally, my decision to abide is subject to costs not being sought against the office of the Minister or myself in my personal capacity.
9. I am, however, in possession of information that is relevant to the determination of part A of the application which will assist the court and it is for this reason that I have decided to deliver this affidavit.
10. I reserve my rights to properly consider my position with respect to part B of the notice of motion. In this affidavit, I shall nevertheless set out the limited role I played in Mr Molefe's return to Eskom in so far

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as it is relevant.

11. Hence for present purposes, since no material relief is sought against me in part A of the notice of motion, I do not intend to take an active part in this part of the litigation and reserve my rights with respect to part B.

RELEVANT FACTS

12. The starting point is correctly envisaged in the founding affidavit deposed to by James Selfe. Eskom is governed by various pieces of legislation, including the Eskom Conversion Act 13 of 2001.
13. Section 6(2) of the Eskom Conversion Act requires me, from time to time during my tenure, to "publish memoranda" and articles of association of Eskom. I am also required to enter into shareholder compacts with Eskom.
14. Two different memoranda of incorporation ("MOI") are relevant in this matter.
 - 14.1 The first, was passed and adopted on 11 July 2014. A copy of this MOI is attached hereto as "LB1".



- 14.2 The second was concluded on 1 July 2016. A copy of this MOI is attached hereto as annexure "LB2". This is the same MOI that is attached as Annexure "JS10" to Mr Selfe's founding affidavit.
15. The material differences between these two documents is that:
- 15.1 the 2014 MOI did not require the Minister to be noted as a party to the employment agreement of the Group's Chief Executive Officer ("CEO"). Paragraph 14.3.4 of the 2016 MOI requires the Minister to *"... be noted as a party to the contract of employment between the Company and the Group Chief Executive"*.
- 15.2 The 2014 MOI did not provide the Minister with the power to remove the CEO as does the 2016 MOI.
16. On 7 March 2016, Mr Molefe and Dr Ngubane, in his capacity as Chairman of Eskom's Board, concluded an executive employment contract, attached hereto as "LB3". This was some three months before the adoption of the 2016 MOI.
17. The material relevant portions of Mr Molefe's employment contract
- 

are set out as follows:

- 17.1 The agreement was for a fixed term scheduled to expire on 30 September 2020. This is set out in clause 3.1 thereof. Mr Molefe's employment would persist subject to either party being entitled to terminate the employment relationship on no less than six months' written notice. Naturally, Eskom could elect to pay Mr Molefe in lieu of notice.
- 17.2 Clause 4 of the agreement, provided that whatever rights had accrued prior to the termination of the employment contract which remained exercisable or enforceable after the termination date would continue to be of full force and effect after the termination date.
- 17.3 Clause 10 of the agreement provided that Mr Molefe would be a member of Eskom's Pension and Provident Fund, subject to the rules of that fund. Eskom would contribute to the fund on Mr Molefe's behalf.
- 17.4 Any consensual cancellation of the contract had to be reduced to writing and signed in terms of clause 19.3.



(The terms of the contract envisage no role to be played by the Minister in the event of a consensual cancellation).

18. On 11 November 2016, Mr Molefe resigned as CEO of Eskom. I issued the press statement marked JS3 to the founding papers stating that I respected his decision to resign. At the time I made this statement, I was not aware of the fact that Molefe had in fact applied for early retirement and that Eskom had on 11 November 2016 accepted such application. I was under the impression that this was a case of a unilateral resignation and nothing more.

19. In particular, at the time I issued the press statement marked JS 3 I was not aware of the following facts:

19.1 an early retirement agreement had been concluded between Eskom and Mr Molefe. This agreement, as I now understand it, was to construe Mr Molefe's resignation as early retirement in terms of the rules of Eskom's pension fund (EPF)..

19.2 On 11 November 2016 Mr Molefe wrote a letter to Dr



Ngubane. In this letter, Mr Molefe requested approval for early retirement in terms of the rules of Eskom's pension fund. I attach a copy of this letter marked "LB4" (which I subsequently obtained from Eskom on 19 April 2017).

- 19.3 In Dr Ngubane's letter marked "LB5" hereto (which I subsequently obtained from Eskom on 19 April 2017), he indicated that the request to treat his resignation as an early retirement for the purposes of the Eskom pension and provident fund was accepted. Mr Molefe's last day in service would be 31 December 2016.
20. All of this correspondence passed without my knowledge. I was not party to the early retirement agreement between Eskom and Mr Molefe.
21. I understood from my meeting with Eskom on 19 April 2017 (dealt with below) that as Eskom was of the view that I had no power to remove or dismiss the CEO, it had the prerogative to enter into such agreement without reference to me.
22. On 08 March 2017 I sent a letter to Eskom requesting a resolution recording Mr Molefe's resignation and the formal appointment of Mr



Koko as Acting CEO. This letter is attached hereto marked "LB6".

23. In response to my letter, Eskom's Board sent a resolution, a copy of which is attached hereto as Annexure "LB7". This resolution only reflected the appointment of Mr Koko but was silent on Mr Molefe's resignation and the terms thereof.

EVENTS AFTER 16 APRIL 2017

24. I was therefore surprised on Sunday, 16 April 2017, to read the article entitled *"Brian Molefe scores a R30 million pay-out from Eskom"*. When I was asked to comment before the article was published, I indicated that I knew nothing about this issue, as it was an operational issue. This is reflected in the second paragraph of The Sunday Times' article, attached hereto as Annexure "LB8".
25. I requested an urgent meeting with Eskom's Board. The purpose of this meeting was to gain an understanding of the terms of Mr Molefe's departure from Eskom. As I understood it, Mr Molefe was employed on a fixed term contract. To my mind, his resignation was just that. I also did not understand why, or on what basis, he would participate in proceeds from Eskom's pension fund.

26. The meeting I requested took place on 19 April 2017. The meeting was attended by, among others, Dr Ngubane; Ms Suzanne Daniel (Eskom's Company Secretary); Ms Veneta Klein (Eskom's Chairperson of People and Governance); and Mr Anton Minnaar (Eskom Executive). I attended this meeting with the Director General and the two Deputy Directors General responsible for Legal, Governance & of Risk as well as Energy in my portfolio.
27. At this meeting, it became apparent that Eskom had agreed to effectively purchase Mr Molefe's pension by means of an early retirement agreement. I understood from this meeting that there was an agreement or understanding reached with Mr Molefe at the time that his employment contract was signed to purchase for him an enhanced pension package given that he wanted some form of security at the end of his fixed term contract. I was not aware of such an arrangement or agreement either and only became aware of this at this meeting.
28. I indicated that I was unhappy with this proposal and felt that it could not be justified. Having learnt of the true position I obviously could not hold the position that Molefe had unilaterally resigned once the true facts had been made known to me. Such a stance would have been unfair and would not have been in accordance with what in fact



transpired.

29. I thus requested Eskom to consider rescinding the early retirement agreement and to renegotiate a package with Mr Molefe. In requesting the Board to renegotiate Mr Molefe's package, I had in mind that they (the Board) might want to consider less expensive options that would also ameliorate Mr Molefe's financial prejudice and any costly litigation that may result if the agreement they reached was not honoured.
30. I expressed my displeasure in a public statement and stated why I could not support the pay-out. I simply did not agree with the reasoning. A copy of my statement is attached hereto marked "LB8" and should be read herein as if specifically incorporated. I pointed out in the statement that I was not a party to the contract of employment and stated that I had requested the Board to report back to me with an appropriate pension proposal.
31. On 11 May 2017, Eskom returned to me with four options which I set out below. The options were put to me after Eskom had informed me that it had taken legal advice from senior counsel which I had no reason to doubt. By this stage, it had become apparent that Eskom's Pension Fund Rules did not permit a payment to Mr Molefe and that



the entire agreement between Eskom and Molefe was based upon a common misunderstanding of the rules of the fund.

32. The options were as follows:

32.1 The first option was consensual rescission of the early retirement agreement. In terms of this, the parties would agree to cancel the early retirement agreement and move to the *status quo ante*. Mr Molefe was required to pay back the monies that he had received pursuant to his early retirement and pursuant to the termination of his contract. In exchange, he would resume employment as the Group Chief Executive of Eskom.

32.2 The second option was non-consensual rescission of the early retirement agreement.

32.3 The third option was for Eskom to advise Mr Molefe that his early retirement had been rescinded and he could opt to resign from Eskom's employ. He would therefore be entitled to the ordinary retirement benefits in terms of the rules.

32.4 The final option was a payment in settlement of the dispute.



33. Of these options, the Board indicated its preference of consensual rescission. I understood from this option that it would inevitably mean a restoration of the status quo ante. The Board indicated that it was also willing to accept Molefe as the Group Chief Executive once again.
34. The Board indicated, at paragraph 5 of the letter, that it had resolved to rescind its approval of Mr Molefe's retirement package and tendered resumption of his duties as Chief Executive Office with effect from 15 May 2017.
35. Furthermore, at paragraph 6, the Board stated as follows:
- "A reinstatement agreement was proposed and accepted between the parties. This agreement is required for various administrative issues to be reversed and also to be presented to the Eskom Pension and Provident Fund for ensuring the exit of the early retirement proposal. As this is simply a reinstatement of his employment, counsel has advised that neither you nor Cabinet's formal approval is required for Mr Molefe to resume his duties as an employee. However, given our relationship and in order to avoid any misunderstanding your approval is nevertheless requested."*
36. I attach a copy of Eskom's letter as "LB8".



37. Attached to Eskom's letter was (i) a letter to Mr Molefe; and (ii) an agreement entitled "Reinstatement Agreement". I attach these documents as annexures "LB9" and "LB10" respectively. I pause to point out that, Dr Ngubane had already signed the reinstatement agreement when he sent it to me. I was not a party to the agreement.
38. Eskom's Board had sent me a letter with a proposal that it had accepted and signed. It simply requested the courtesy of an approval from me. This approval, according to its legal advice, was not necessary to regularise Mr Molefe's appointment.
39. It was in this context that, on 12 May 2017, I issued out a statement indicating that Mr Molefe had agreed with the Board to serve out the remainder of his original contract and to reconsider the terms of his contract that resulted in the previous pension arrangement. A copy of this statement is attached hereto marked Annexure "LB12".
40. I understood that upon rescission of the contract the status quo would have to be restored. I stated that the Board should reconsider the contract that resulted in the previous pension arrangement. I made this statement on the basis of my understanding that there was an agreement reached with Mr Molefe to grant him an enhanced pension package at the time when his contract of employment was



- 15 -

concluded (which I was not party to nor had I knowledge thereof) and I did not want the package issue to resurface in the future once again.

41. I pause also to point out that if it is found that the 2016 MOI is relevant, the early retirement contract was concluded while the 2016 MOI had been in force. As Minister I was not a party to the early retirement contract and this too would inevitably mean that the agreement was invalid and that the status quo would have to be restored.
42. I am aware of the third respondents track record at Eskom which I have mad mention of in LB12.
43. I am also aware that there are certain allegations made against Mr Molefe in the Public Protector's Report. The status of this report is matter that is currently being address by the Office of the President.
44. I cannot prejudge what may transpire on this aspect.
45. I state in conclusion that:
 - 45.1 I did not in any way act unreasonably when I learnt of the true facts namely that Mr Molefe had not resigned unilaterally but rather that he had unbeknown to me entered



into an early retirement with Eskom. It would not have been proper or fair of me to contend that Mr Molefe had resigned unilaterally after having been appraised of the true facts.

45.2 In not supporting a 30-million-rand pension pay out to Molefe and in requesting the Board to rescind its decision and to try to resolve the matter I was acting in the best interest of the country.

45.3 I also believed, on the strength of the legal advice received by Eskom and communicated to me and which I had no reason to doubt, that once the contract of early retirement had been mutually rescinded on the basis of an error it would inevitably mean that the status quo would have to be restored.

45.4 I was not party to the reinstatement agreement.

45.5 I acted with prudence when I stated in LB 12 that the Board should reconsider the contract that resulted in the previous pension arrangement as I do not want this issue to resurface in future if there were promises made to Mr Molefe when he contracted with the Board and which contract I was not

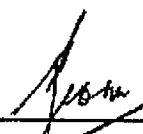


party to.

CONCLUSION

- 46. The information above reflects the extent of my involvement in Mr Molefe's reinstatement at Eskom. .

- 47. Since no relief is sought against me in my capacity as Minister in Part A, I do not oppose this part of application brought by the Democratic Alliance. I shall abide by this Honourable Court's ruling, subject to the reservation of my rights in respect of costs in this matter.



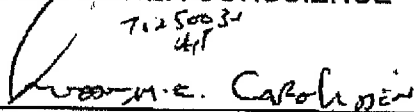
LYNETTE BROWN

SIGNED AND SWORN TO BEFORE ME AT Cape Town ON THIS THE 22 DAY OF MAY 2017, THE DEPONENT HAVING ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND CONSIDERS THE OATH BINDING ON HIS/HER CONSCIENCE

SOUTH AFRICAN POLICE SERVICE
UNIT COMMANDER PARLIAMENT
PROTECTION AND SECURITY SERVICES
WESTERN CAPE

2017 -05- 22

PRIVATE BAG 71, STALPLEIN 8015
CAPE TOWN
SOUTH AFRICAN POLICE SERVICE



COMMISSIONER OF OATHS
NAME: M.C. Carolissen
CAPACITY
ADDRESS:

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 33051/17

In the matter between --

DEMOCRATIC ALLIANCE **Applicant**

and

MINISTER OF PUBLIC ENTERPRISES **First Respondent**

ESKOM HOLDINGS SOC LIMITED **Second Respondent**

BRIAN MOLEFE **Third Respondent**

AND

CASE NUMBER: 34568/2017

In the matter between -

ECONOMIC FREEDOM FIGHTERS **Applicant**

and

ESKOM HOLDINGS SOC LIMITED **First Respondent**

MINISTER OF PUBLIC ENTERPRISES **Second Respondent**

BRIAN MOLEFE **Third Respondent**

NATIONAL UNION OF MINeworkERS **Fourth Respondent**

FILING SHEET: ANSWERING AFFIDAVIT

KINDLY TAKE NOTICE that Eskom Holdings SOC Limited (Second Respondent under case number 33051/17; First Respondent under case number 34568/2017) hereby presents for filing its answering affidavit.

DATED at SANDTON on this the 22nd day of MAY 2017



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**TO:
THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

FILING BY HAND

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Fourth Respondent
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SERVICE BY HAND AND EMAIL

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 33051/17

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MINISTER OF PUBLIC ENTERPRISES

First Respondent

ESKOM HOLDINGS SOC LIMITED

Second Respondent

BRIAN MOLEFE

Third Respondent

AND

In the matter between:

CASE NO: 34568/17

ECONOMIC FREEDOM FIGHTERS

Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

MINISTER OF PUBLIC ENTERPRISES

Second Respondent

BRIAN MOLEFE

Third Respondent

NATIONAL UNION OF MINEWORKERS

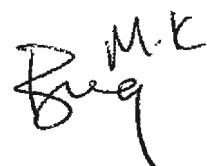
Fourth Respondent

ANSWERING AFFIDAVIT

I, the undersigned,

BALDWIN SIPHO NGUBANE

do hereby make oath and state that:



1. I am the chairperson of the Board of Directors of Eskom Holdings SOC Limited ("*Eskom*").
2. Save where otherwise stated, or where the converse appears from the context, all the facts stated herein are within my personal knowledge and are true and correct.
3. I am duly authorised to depose to this answering affidavit in opposition to both the applications referred to above.
4. This is an answering affidavit prepared in opposition to the relief sought in Part A of the application brought by the Democratic Alliance ("*the DA*") under case number 33051/17 and the relief sought in Part A of the application brought under case number 34568/17 by the Economic Freedom Fighters ("*the EFF*"). In both applications, urgent interim relief is sought pending the outcome of the relief sought in Part B of each of the applications.
5. I depose to a single answering affidavit for a number of reasons —

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- 5.1. First, the EFF has indicated, so I am advised, that it will seek to have its application for urgent interim relief heard together with the DA's application for urgent interim relief.
- 5.2. Second, in relation to the circumstances relevant to both applications, they substantially overlap in facts. Consequently, from Eskom's point of view, it is appropriate that the relevant factual setting be dealt with in a single affidavit, thereby avoiding repetition.
- 5.3. Third, whilst there are differences in the form in which the DA and the EFF couched the relief which they seek, in substance both applications are directed towards interdicting or preventing Brian Molefe ("*Molefe*") from fulfilling his duties and responsibilities as the CEO of Eskom. In whichever way the relief is couched, the substantive issue remains the same.
6. The DA's application was served on 15 May 2017. The EFF's application was served late on 19 May 2017. Eskom opposes the interim relief sought in both applications. In due course, Eskom will

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also file papers in opposition to the relief sought in part B of each of the applications.

7. Having regard to the central issue of substance in both the applications, I shall first deal with the chronology of events relevant to Molefe's tenure as CEO of Eskom. I shall thereafter deal with the founding affidavits in each of the DA's and the EFF's applications.

THE CHRONOLOGY RELEVANT TO MOLEFE'S TENURE AS
ESKOM'S CEO

8. Molefe was appointed as Eskom's CEO with effect from 1 October 2015.
9. On 16 October 2015, I, in my capacity as Chairperson of Eskom, addressed a letter to the Minister of Public Enterprises ("*the Minister*") setting out Eskom's proposal for Molefe's remuneration package for the Minister's consideration. A copy of my letter is annexure **ESK1** hereto.
10. The Minister responded in a letter dated 1 November 2015, a copy of which is annexure **ESK2** hereto. As appears therefrom, the Minister

11-12
Buz

approved the total guaranteed remuneration proposed for Molefe, with effect from the date of his appointment as CEO of Eskom. The Minister further advised that Cabinet had noted Molefe's appointment, subject to the period of employment being confirmed. The Minister expressed her view (which was also, so she stated, Cabinet's view) that "... *the period of employment be stipulated as five years, subject to annual performance reviews*"). The Minister then stated that she awaited receipt of the "*draft employment contract and performance agreement*".

11. On 9 November 2015, I in my capacity as chairperson of the Eskom Board, addressed a letter to Molefe, confirming his appointment as Group Chief Executive Officer. A copy of the letter is annexure ESK3 hereto. Amongst the issues dealt with in the letter were deductions relating to the Eskom Pension and Provident Fund ("*the Pension Fund*"). Molefe signed the letter on 11 November 2015.
12. In the preparation of an employment contract for Molefe, an issue which had arisen related to Molefe's retirement benefits. The specific issue in this regard was communicated to the Minister in a letter which

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I addressed on 25 November 2015, a copy of which is annexure ESK4 hereto. The issue and the related proposal was set out as follows:

"It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr Molefe has served in numerous high-ranking South African organisations at executive level, essentially to stabilise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short-term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To bridge this gap, the following contractual stipulations are proposed:

- *Regardless of Mr Molefe's age after the 5-year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.*
- *That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.*
- *That Eskom carries the cost of such penalties (to be paid over to the EPPF).*
- *In the event that Mr Molefe's contract is not extended beyond the 5-year termination date, he will not be allowed to subscribe to any other SOC or government pension fund.*
- *Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.*

I trust that this will receive the Minister's favourable approval."

*M.K
Brey*

13. On 9 February 2016, a meeting of the Board People & Governance Committee: In-Committee was held ("*the Committee*"). A copy of the relevant extract of the minutes of that meeting is annexure **ESK5** hereto. This is the Committee which historically has and still does deal with and implements the issues reflected on the minutes.

14. Paragraph 7.5 of annexure ESK5 refers to and notes the discussion relating to the conclusion of Molefe's employment contract, with particular reference to the issue relating to retirement benefits, and in particular "... the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund Rules. This was followed by a request for "... *the Eskom Rules to be amended in respect of executive directors with fixed-term contracts to make up the shortfall in years, waive the penalties and refund the Pension and Provident Fund the actual costs relating to the additional service*".

15. Following on this discussion, it was resolved:
 - "1. *The current Eskom Pension and Provident Fund (EPPF) rule that employees may proceed on retirement from age fifty with ten years' service remains applicable.*

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Bry

2. *In cases where Executives Director's (appointed on fixed-term contracts) decide to take early retirement and there is a shortfall regarding the EPPF ten years' service rule, Eskom shall –*
 - (i) *bridge the gap to make up for the ten years;*
 - (ii) *waive penalties applicable to early retirement;*
 - (iii) *refund EPPF actual costs for additional services added, plus penalties applicable to early retirement."*

16. A signed copy of the relevant resolution is annexure **ESK6** hereto.

17. Paragraph 1 of the resolution makes reference to an EPPF rule. In fact the reference should have been to the Pension Fund's "*Member's Guide to Benefits*", a copy of which is **ESK7** hereto. In particular, the relevant provision is in 3.3(d). This "*Member's Guide*" is published by the Pension Fund and has always been used as the point of reference by the Committee.

18. Subsequently, and against the background of the resolution reflected in annexure **ESK6**, Eskom and Molefe concluded his employment contract, a copy of which is annexure **ESK8** hereto ("*the employment contract*"). The employment contract was concluded on 15 March 2016.

19. The employment contract –

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- 19.1. records that Molefe had commenced employment with Eskom on 1 October 2015, and with effect from that date Eskom appointed him as its Group Chief Executive;
 - 19.2. was a fixed-term contract expiring on 30 September 2020;
 - 19.3. gave either party the entitlement to terminate the employment relationship by giving the other not less than six months' written notice, provided that Eskom was entitled to terminate the employment contract with or without notice, or on such other basis as it considered appropriate for any reason justified in law.
 - 19.4. provided for Molefe to continue as a member of the Pension Fund subject to its Rules.
20. Since his appointment as Group Chief Executive of Eskom, Molefe has fulfilled his responsibilities with efficiency and also in a manner which brought stability to Eskom in difficult circumstances. During his tenure, Eskom was able to successfully deal with significant issues relating to procurement and also achieved stabilisation of the electricity grid, thereby initially reducing the problem of load-

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shedding and eventually avoiding the load-shedding. The circumstances in which Molefe took over as Group Chief Executive were difficult. Molefe though confronted these difficulties with vigour and was substantially responsible for assisting in restoring stability to the functioning of Eskom, particularly in its most significant function, namely to ensure the continued uninterrupted supply of electricity to South Africans.

21. However, during the latter part of 2016, the Public Protector published her report, extracts of which are substantially relied upon by both the DA and the EFF in their applications. The content of the Public Protector's report substantially forms the basis for the attack by both the EFF and the DA on the suitability of Molefe to be the Eskom Group's Chief Executive and the appropriateness of him continuing in that position. I will not deal with the content of the Public Protector's report and what is stated therein in this regard, for a number of significant reasons –

- 21.1. First, the remedial action proposed by the Public Protector in her report is the establishment of a commission of enquiry for the very purpose of enquiring into, investigating and receiving

M.K.
Guy

evidence on the many allegations which are referred to in her report.

21.2. Second, other than for the remedial action relating to the appointment of a commission of enquiry, the report itself refers to many allegations made against numerous parties, including Molefe, and to observations made by the Public Protector.

21.3. Third, there are no findings made by the Public Protector against Molefe nor was there any remedial action proposed by her in relation to Molefe.

21.4. Consequently, and in relation to Molefe, from Eskom's perspective the status of the Public Protector's report was precisely what was said therein. There were numerous allegations and observations. However, the Public Protector herself had identified the need for an independent commission of enquiry, which would be tasked with investigating the allegations made against, *inter alia*, Molefe and considering observations made by the Public Protector.

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22. In these circumstances, it would have been entirely inappropriate of Eskom to act against Molefe on the basis that the as yet untested allegations were actually proven.
23. From Eskom's perspective, and in light of the performance of Molefe as Group Chief Executive, there was at the time no need to take any steps against Molefe.
24. At the time though, the issue had attracted significant comment, with views being expressed both against and in favour of Molefe. The adverse criticism of Molefe appeared to have been founded upon the Public Protector's report without regard to what was stated therein, namely that the report reflected allegations made against Molefe and observations of the Public Protector without any findings being made against Molefe and no remedial action proposed against Molefe. This was a task which the Public Protector, through remedial action, had assigned to a commission of enquiry.
25. The Commission of enquiry has not yet been appointed, but this is a matter which can hardly be dealt with either by Eskom or Molefe. I am advised that the President of the Republic of South Africa has

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instituted review proceedings in this Honourable Court under case number 91139/16 in relation to the Public Protector's report. In addition, I understand that the DA has also instituted proceedings in this Honourable Court under case number 21029/17, also relating to the Public Protector's report. Eskom is not a party to either case, nor to the best of my knowledge, is Molefe.

26. From my personal engagements with Molefe, I sensed that Molefe felt the burden of being judged on the basis of allegations which were untested and not proven. He wanted nothing more than to be given a fair opportunity to challenge each and every one of the allegations of impropriety made against him. He has thus far not been given that opportunity, yet the premise of both the DA application and the EFF application is that he be treated on the basis that the allegations against him are proven.
27. I have no doubt that it was as a result of the pressure which Molefe felt through the unfortunate swirl of criticism around him that he, on 11 November 2016, addressed a letter to me as chairperson of the Eskom Board of Directors. A copy of that letter is annexure **ESK9** hereto. The letter and what follows from the letter is significant to an

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understanding of the facts relevant to the present applications. Molefe did not resign from his post as Eskom's Group Chief Executive.

28. Annexure ESK9 states the following:

"I hereby request for approval for early retirement in terms of the Rules of the Eskom Pension Fund read in conjunction with the resolution of the People and Governance Subcommittee of the Board dated 9 February 2016.

My last day of service will be 31 December 2016.

..."

29. There are two important features of annexure ESK9 -

29.1. First, Molefe's request was for *"early retirement"*;

29.2. Second, the request was premised upon the Rules of the Pension Fund read in conjunction with the resolution reflected on annexure ESK6 (which provides for retirement from age 50 with provision for Eskom bridging the gap to make up for the shortfall regarding the 10-year service rule and the waiver of penalties applicable to early retirement).

30. On 24 November 2016, I addressed a letter to Molefe, a copy of which is annexure **ESK10** hereto.

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31. Annexure **ESK10** hereto is the communication of the acceptance, by the Eskom Board, of Molefe's request for early retirement. However, and erroneously, the provision in **ESK10** dealing with the retirement benefits in terms of the Pension Fund Rules, incorrectly refer to the rules relating to retrenchment as opposed to early retirement. Rules 28 and 21.4 were erroneously referred to. The acceptance of Molefe's "*request for approval for early retirement*" was not dealt with in accordance with the terms of that request, namely that it be in terms of the Pension Fund Rules read together with the resolution reflected in annexure **ESK6**. In other words, the terms of the "*approval*" did not coincide with the terms of the "*request*". Furthermore, Eskom was mistaken in its belief that it could permit for early retirement prior to the age of 55.
32. The purported early retirement agreement, concluded as set out above, was then given effect to. Eskom made payment of just over R30 million to the Pension Fund.
33. Molefe then departed from Eskom (on the basis of his retirement proposal) and subsequently became a Member of Parliament for the African National Congress.

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Frey

34. The matter then reared its head when the Minister, on the 23rd April 2017 and following on certain press reports, issued a press statement, a copy of which is Annexure **ESK11** hereto. In order to deal with the issue, the Eskom Board met on 24 April 2017. This was followed by my meeting the Minister on 25 April 2017. We discussed the implications of the early retirement agreement. The Eskom Board thereafter met again and, having considered legal advice received, concluded that the early retirement agreement had legal impediments to its implementation and therefore had to be rescinded and the status quo restored.
35. The "*agreement*" concluded between Eskom and Molefe relating to his "*retirement*" was concluded in good faith, but on terms which, insofar as it related to pension benefits, could not be implemented. Molefe's request for early retirement was intricately linked to the pension benefit terms flowing therefrom. His request was a unitary request which could not be separated out between "*retirement*" and the benefits flowing therefrom.
36. Eskom was left in a difficult position because the payment of the amounts referred to above to Molefe and to the Pension Fund were

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made pursuant to a "*retirement*" but the Rules of the Pension Fund did not permit for early retirement at the age of 50. Early retirement could only be taken at the age of 55. Eskom, mistakenly, had acted on the basis of the resolution set out in annexure ESK6 hereto. Eskom's mistaken belief was, *inter alia*, that the resolution (ESK6) could have been passed and implemented on its terms. But the Pension Fund rules do not permit for "*retirement from age 50*".

37. When it became clear to Eskom, on the basis of legal advice received, that it was wrong in this regard and that its agreement with Molefe for his retirement was concluded on a legal premise which was incorrect, Eskom was left with the task of undoing what had been done. Consequently, Eskom passed a resolution to rescind its decision to approve Molefe's request for retirement. The consequence thereof was that the status quo had to be restored. The amounts paid out by Eskom on account of Molefe's "*retirement*" would have to be repaid to Eskom and, in order to restore the status quo, Molefe would resume his duties as the Eskom Chief Executive.
38. Consequently, on 3 May 2017, I addressed a letter to Molefe, in these terms, a copy of which is annexure **ESK12** hereto. The minute of the

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Special Eskom Board meeting dealing with the issue is annexure **ESK13** hereto.

39. In consequence of the resolution to rescind the purported approval of the early retirement request, Molefe and Eskom concluded a reinstatement agreement, a copy of which is annexure **ESK14** hereto ("*the reinstatement agreement*"). The reinstatement agreement provided for Molefe's employment contract to continue on its terms and for Molefe to resume his duties in terms of his employment contract. Molefe also agreed to repay amounts received by him pursuant to his purported "*early retirement*". The parties also agreed that the period between 1 January 2017 and 15 May 2017 (i.e. the date of his purported early retirement and the date of his resumption of his duties), be treated as unpaid leave.
40. Molefe's acceptance of the terms of the retirement agreement is confirmed by the signature to a letter dated 11 May 2017, a copy of which is annexure is **ESK15** hereto.
41. In summary, I make the following points –

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- 41.1. Molefe did not resign from Eskom. His departure was on account of a purported "*early retirement*", on terms though which could not be effected in law.
- 41.2. Consequently, the purported early retirement could not be given effect to and was for that reason rescinded by Eskom. The consequence of this was that the status quo as it existed prior to the purported conclusion of the early retirement agreement had to be restored. Molefe has agreed to repay all amounts which he received from the Pension Fund, and the Pension Fund will repay to Eskom all amounts paid by Eskom to the Pension Fund in relation to Molefe's purported "*early retirement*".
- 41.3. Prior to Molefe's purported early retirement, Eskom did not consider it appropriate to remove Molefe from his position as Group Chief Executive. In this regard, Eskom's Board was mindful of the terms of the Public Protector's report, which contained allegations made by various people and observations by the Public Protector, but with the only remedial action (which in form is significant) being that those

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allegations and observations be tested by a duly appointed commission of enquiry.

41.4. The Eskom Board is also mindful of the fact that as Group Chief Executive, Molefe had played a significant role in stabilising Eskom. His performance in this regard could not be faulted.

42. It is also significant, in both the DA application and the EFF application, that there are assumptions made and arguments based on a premise which are either incorrect or ill-founded -

42.1. Thus, a fundamental premise of the DA application is that Molefe had resigned as Group Chief Executive of Eskom and was thereafter again appointed or reinstated to that position by the Minister. Molefe did not resign. And, there was no decision made by the Minister to reinstate or appoint Molefe again. Molefe resumed his duties as Group Chief Executive on account of the failure of the purported early retirement agreement.

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Zug

42.2. Both the DA and the EFF significantly found their cases on the strength of the Public Protector's report. However, they fail to take into account that every reference they make to the Public Protector's report in relation to Molefe is a reference either to allegations made against Molefe or observations made by the Public Protector. The key aspect of the Public Protector's report, and the only aspect which constitutes the remedial action proposed by the Public Protector, is that a commission of enquiry be appointed to investigate the many allegations made in the Public Protector's report.

42.3. Thus, both the EFF and the DA would have this Court make an order which would prevent Molefe from fulfilling his duties as Group Chief Executive of Eskom and would prevent Eskom from benefitting from Molefe's role as such in circumstances where the allegations against Molefe have not been tested. This is akin to an adverse sanction against a person without that person having had the benefit of defending himself (as would be the case of a commission of enquiry as proposed by the Public Protector in her report).

M-k
Jug

43. Against this background, I now deal with the founding affidavits in both applications. I might add though that, in doing so, I will not repeat the sequence of events as set out above.

AD RESPONSE TO THE DA's FOUNDING AFFIDAVIT OF JAMES SELFE

44. **AD PARAGRAPHS 1 AND 2**

These allegations are not disputed.

45. **AD PARAGRAPH 3**

I deny that the facts contained in the founding affidavit are within the deponent's personal knowledge or that they are all true and correct.

46. **AD PARAGRAPH 4**

I note these allegations.

47. **AD PARAGRAPHS 5 - 8**

47.1. The identity and designation of the parties are admitted.

M.K
By

47.2. However, the allegations made in the last sentence of paragraphs 6 and the second sentence of paragraph 8 are denied.

48. **AD PARAGRAPHS 9 AND 10**

48.1. For reasons set out above, Eskom denies that the DA is entitled to the relief that it seeks in Part A of its application. Eskom will in due course file a supplementary answering affidavit dealing more specifically with Part B of the application.

48.2. It is important to note though that the relief sought in prayer 2 of Part A of the application hinges upon the relief sought in prayers 2 and 3 of Part B. However –

48.2.1. the contention by the DA that the Minister had taken a decision to "*appoint and/or reinstate*" Molefe to the position of Group Chief Executive is factually incorrect. The Minister took no such decision. The facts are as set out above.

M.K.
Fug

48.2.2. Molefe has already undertaken to repay amounts received by him pursuant to the failed early retirement agreement between him and Eskom, and he is performing in terms of that agreement.

48.3. Consequently, interim relief is sought in respect of an application where the factual premise is on the one part incorrect and on the other part moot.

49. **AD PARAGRAPH 11**

49.1. Molefe is the Group Chief Executive at Eskom.

49.2. Molefe did not resign from his position as Group Chief Executive at Eskom.

49.3. In relation to the Public Protector's report, allegations were made against Molefe. There were though no findings made against him nor was there any remedial action proposed by the Public Protector in relation to Molefe.

M-K
Bing

50. **AD PARAGRAPHS 12 - 14**

50.1. I deny the allegations herein contained. They are factually incorrect.

50.2. In this regard I refer to the chronology of events set out above in which the true position is set out.

51. **AD PARAGRAPHS 16 - 18**

51.1. The allegations made herein form the substantive basis upon which the DA has brought its application.

51.2. They rely entirely on the content of the Public Protector's report of 2 November 2016.

51.3. Significantly though, they do not fairly present the essence of the report, which is that the report records allegations made about Molefe on substantive issues. It is not my intention to deal with these allegations.

51.4. However, it is important to note that the only remedial action proposed by the Public Protector in her report was that a

M.K
Sey

commission of enquiry be appointed in order to investigate these allegations.

51.5. In the approach it has adopted, the DA has in essence sought to elevate a report referring to allegations made against Molefe into findings made against Molefe. This is palpably unjustified.

51.6. Save as aforesaid, these allegations are denied.

52. **AD PARAGRAPHS 19 AND 20**

52.1. The press statements released by Molefe and Eskom are annexures **ESK16** and **ESK17** hereto respectively.

52.2. The factual content in which those statements were released are set out earlier herein. They were on the basis of an application on specified terms for early retirement made by Molefe and an acceptance thereof which was neither in terms of the request made by Molefe nor in terms permitted by the Rules of the Pension Fund. It is in consequence thereof that

M.K
Fug

Eskom has rescinded its decision and the status quo has been restored.

53. **AD PARAGRAPH 21**

I do not comment on the statement published by the Minister save to deny that Molefe had resigned from his post as Eskom Group Chief Executive.

54. **AD PARAGRAPH 2**

54.1. I note these allegations.

54.2. I do not know whether the DA has actually laid criminal charges against Molefe. In any event, what is significant is that the approach adopted by the DA in the present application equates to seeking relief against Eskom and Molefe as if Molefe has been convicted of the allegations made against him.

M.K.
Eg

55. **AD PARAGRAPH 23**

The appointment of an acting group executive for Eskom was made in the context of the belief that Molefe had lawfully gone on early retirement.

56. **AD PARAGRAPH 24**

56.1. The allegations herein contained are not all correct.

56.2. In this regard, I refer to what I have stated earlier herein. Molefe did not resign his post.

56.3. It is true that there were serious allegations made against Molefe in the Public Protector's report. However, the most significant aspect of that report was the remedial action which was proposed by the Public Protector, namely a commission of enquiry appointed to investigate the allegations.

56.4. The DA wants this Court to treat those allegations as if they have been proven and to adversely sanction Eskom and Molefe on that basis.

Mok
Fuy

57. **AD PARAGRAPHS 25 AND 26**

57.1. Eskom did advertise the position of Group Chief Executive. This was done in the context of the belief that Molefe could take early retirement on the basis which had been requested by him. This turned out not to be the case and consequently the purported early retirement was rescinded and the status quo restored.

57.2. I will not comment on how press reports dealt with Molefe's "*early retirement*" or the amount of R30 million. I have set out the facts above.

58. **AD PARAGRAPH 27**

58.1. The DA did request a copy of Molefe's employment contract.

58.2. A copy thereof is an annexure to this application.

M.K
Fry

59. **AD PARAGRAPHS 28 AND 29**

59.1. I admit that the Minister did not approve the terms of Molefe's "*early retirement*".

59.2. It was for that reason that the Board of Eskom had to consider the effect of the early retirement agreement between itself and Molefe.

59.3. Faced with the legal difficulty that the agreement could not be enforced and that the Minister did not approve the basis upon which Molefe's early retirement was approved, the Board rescinded that agreement and the status quo was restored.

60. **AD PARAGRAPHS 30 AND 31**

These allegations are admitted.

61. **AD PARAGRAPHS 32 AND 33**

61.1. Molefe has resumed his position as Eskom's Group Chief Executive because the early retirement agreement was rescinded for the reasons set out above.

M.K
Bry

- 61.2. The status quo has therefore been restored.
- 61.3. The basis upon which this has occurred is a matter of law which was a result of an agreement having been concluded on an incorrect legal basis.
- 61.4. Save as aforesaid, the allegations herein contained are denied.

62. **AD PARAGRAPHS 34 – 41 : Urgency**

- 62.1. I deny that the application is urgent as contended for by the DA.
- 62.2. The case for urgency is substantially made on the basis that Molefe had resigned from Eskom, that if the matter is dealt with in the ordinary course Eskom and the public would suffer harm and further that the DA would be unable to obtain effective redress at a hearing in due course.
- 62.3. There is though a fallacy to the DA's approach –

M-K

Grey

62.3.1. Molefe did not resign. The status quo has simply been restored, having regard to the invalidity of the agreement for his early retirement.

62.3.2. Whilst the DA makes statements such as the interests of good corporate governance and imminent and irreparable harm to Eskom and the public, it does not furnish any details on these conclusions it seeks to draw.

62.4. In short, the DA has not made out a case for urgency and consequently Eskom disputes urgency. In this regard, it is important to note that the relief sought by the DA has far-reaching consequences and there is no reason why Eskom ought not to have been given proper time to deal with the application, both in the preparation of its affidavit as well as in preparation for the argument.

M.K
Rug

63. **AD PARAGRAPHS 42 - 60**

63.1. All of these allegations set out relevant statutory provisions and provisions from Eskom's MOI as well as the Rules of the Pension Fund.

63.2. These averments will be dealt with, to the extent required, during argument at the hearing of this application. Needless to say, these averments are admitted only insofar as they correctly set out the statutory provisions, the provisions from Eskom's MOI and the Rules of the Pension Fund.

64. **AD PARAGRAPH 61 AND 62**

For reasons set out above, these allegations are denied.

65. **AD PARAGRAPH 63**

65.1. The premise of the allegations herein contained is incorrect. Molefe resumed his duties at Eskom on account of the agreement relating to his early retirement having been rescinded because it could not be legally implemented.

M.K
Bry

65.2. Consequently, there was no decision made by the Minister which resulted in Molefe resuming his duties.

66. **AD PARAGRAPHS 64 - 81**

66.1. I have already dealt with the allegations herein contained.

66.2. Consequently, to the extent that any of these allegations are inconsistent with what I have set out above, they are denied.

67. **AD PARAGRAPH 82**

I deny that the DA has set out the requirements for interim relief.

68. **AD PARAGRAPH 83**

68.1. I deny that the DA has established a *prima facie* right.

68.2. In this regard, its case is substantially founded upon Molefe having resigned and the Minister thereafter having taken a decision to employ Molefe or to reinstate him.

68.3. But, for reasons set out above, these assumptions by the DA are factually incorrect.

M.K
Bry

69. **AD PARAGRAPHS 84 - 94**

- 69.1. The case which the DA attempts to make against Eskom in relation to the position of Molefe is based on labels such as good corporate governance, public interest and with reference to the Public Protector's report.
- 69.2. However, the DA does not demonstrate that the allegations made in the Public Protector's report are indeed correct. Nor does the DA pay any attention to the remedial action actually proposed by the Public Protector, namely the appointment of a commission of enquiry.
- 69.3. In relation to situations that there would be harm to Molefe or Eskom should Molefe continue acting as the Group Chief Executive, this is completely unfounded and not substantiated in any way by the DA. In this regard, the DA does not, with reference to Molefe's performance as Group Chief Executive, point to any single instance which might suggest that were Molefe to continue as the Group Chief Executive of Eskom, there would be harm done to Eskom or to the public.

M.K
Zug

69.4. Furthermore, the DA contends that Molefe should not be permitted to continue as Eskom's Group Chief Executive "*while he is under investigation*". But, Molefe is not under investigation. And, there is nothing in the Public Protector's report which suggests, as remedial action, that he be placed under investigation. What has been suggested is that all of the allegations (which go well beyond Molefe) recorded in the Public Protector's report be the subject matter of a commission of enquiry so that they could be fully dealt with. But, the DA has sought to take issue specifically with Molefe in this context. There is no suggestion by the DA that it has sought to take similar action against any of the other persons referred to in the Public Protector report against whom allegations have been made.

69.5. Save as aforesaid, the allegations herein contained are denied.

M-K
Ry

70. **AD PARAGRAPHS 95 - 97**

70.1. If interim interdictory relief is granted, Molefe will be prevented from performing his duties as Eskom Group Chief Executive.

70.2. Eskom similarly will be prohibited from the benefit of Molefe performing his duties in that capacity and will be placed in the unsatisfactory position of having to appoint an Acting Group Chief Executive for the period it will take for the matter to be finalised.

70.3. Again, beyond simply stating conclusions, the DA does not really deal with the balance probabilities.

71. **AD PARAGRAPHS 98 AND 99**

For reasons set out above, the factual foundation of these allegations is incorrect. They are accordingly denied.

M.K
Bry

72 **AD THE DA'S SUPPLEMENTARY AFFIDAVIT**

- 72.1 In its supplementary affidavit the DA deals further with the Public Protector's report and then seeks to introduce what it terms as new facts but what is really hearsay reference to press comments allegedly attributed to former Minister Ramathloadi.
- 72.2 In relation to the Public Protector's report references, I refer to what I have already stated above.
- 72.3 In relation to the press reports which purport to reflect statements purportedly made by Mr Ramathloadi, not only is this hearsay, but it is also untested, Eskom cannot be expected to be drawn in court proceedings into replying to press reports on what Mr Ramathloadi is alleged to have said.
- 72.4 Accordingly, Eskom need not deal with the supplementary affidavit further. It goes without saying that any allegations therein which are in conflict with this affidavit, are denied.

M.K
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WHEREFORE Eskom prays for an order that part A of the DA's application be dismissed with costs.

AD THE EFF'S FOUNDING AFFIDAVIT

73. In Part A of the relief sought in its application, the EFF seeks an order suspending a board resolution of Eskom and interdicting Eskom from implementing that board resolution.
74. The relevant board resolution though was a board resolution by Eskom to rescind its decision to approve Molefe's request for early retirement on the terms as sought by Molefe. That resolution has already been implemented.
75. For reasons set out above the early retirement agreement cannot be given effect to. Consequently, the relief sought by the EFF in Part A of its application would result in the early retirement agreement becoming operative.
76. For this reason alone, the relief sought by the EFF should not be granted.
77. Prior to dealing with the allegations in the EFF founding affidavit *ad seriatim*, I emphasise again that I deal only with the application insofar as it relates to Part A of the relief sought. Eskom reserves the right to supplement this

M.K
Bry

affidavit in order to deal with the relief sought in Part B which is of far-reaching effect.

78. AD PARAGRAPH 1

These allegations are admitted.

79. AD PARAGRAPH 2

I deny that the averments in the founding affidavit are true or that they are within the deponent's personal knowledge.

80. AD PARAGRAPH 3

80.1 I admit the citation of the EFF.

80.2 Save as aforesaid, I have no knowledge of the allegations and do not respond thereto.

81 AD PARAGRAPHS 4 & 5

These allegations are admitted.

M.K
Fuy

82 **AD PARAGRAPH 6**

82.1 I admit the citation of Molefe.

82.2 For reasons set out above, the remaining allegations herein contained are denied.

83 **AD PARAGRAPH 7**

I note these allegations.

84 **AD PARAGRAPH 8**

I do not place these allegations in issue.

85 **AD PARAGRAPH 9**

85.1 To the extent that the judgment of the Constitutional Court referred to herein is correctly quoted, I do not take issue with these allegations.

85.2 However, I deny that the passage quoted from the relevant Constitutional Court judgment is relevant to this application, or to the facts of this application.

M.K.
Zug

86 AD PARAGRAPHS 10 - 13

To the extent that the averments herein correctly quote what is stated in the Public Protector's report, they are admitted.

87 AD PARAGRAPH 14

87.1 To the best of my knowledge, the President has not appointed a commission of enquiry.

87.2 I do not know the reasons for this, nor am I able to comment on the reaction from the Executive to the Public Protector's report.

87.3 However, as I understand it, both the President and the DA have instituted court proceedings in relation to the Public Protector's report.

88 AD PARAGRAPH 15 & 16

88.1 As stated above, the Public Protector's report made reference to allegations against Mr Molefe. No findings have been made against Molefe. The very purpose for the commission of enquiry as proposed by way of remedial action by the Public Protector is for those allegations to be tested. Until then, they remain allegations, and no more.

M.K.
Eug

88.2 Save as aforesaid, these allegations are denied.

89 **AD PARAGRAPH 17**

89.1 Eskom has not taken the Public Protector's report under judicial review.

89.2 Eskom did not do so because it welcomes the appointment of a commission of enquiry to consider the allegations contained in the Public Protector's report. In relation to those allegations and any observations made by the Public Protector in her report, those could not, so I am advised, in law be taken on review.

90 **AD PARAGRAPH 18**

90.1 These allegations are noted.

90.2 For reasons set out in this affidavit, I deny the EFF is entitled to the relief sought in part A of its application.

M-K
Fuy

91 **AD PARAGRAPH 19**

91.1 Reference is made in this paragraph to the suitability of both Molefe and members of Eskom's Board.

91.2 However, the relief sought, by way of urgency, relates only to Molefe.

91.3 Part B is not part of the urgent application and Eskom will deal with the averments in the founding affidavit in relation to Part B in due course. I, however, deny that members of the Eskom Board are not fit and proper persons.

92 **AD PARAGRAPH 20**

92.1 These allegations are denied.

92.2 The only remedial action proposed by the Public Protector is the appointment of a commission of enquiry. That commission of enquiry has been proposed precisely in order to fully deal with the many allegations referred to in the Public Protector's report.

92.3 It would be improper in the extreme to treat any person against whom allegations were made as recorded in the Public Protector's report as if

W.K.
Bry

those allegations had been proven. If that were the case, there would be no purpose for a commission of enquiry.

93 AD PARAGRAPH 21 (and the paragraphs referred to as 13.1 – 13.6)

93.1 Again, what has been extracted from the Public Protector's report are allegations made against various persons. Clearly, the allegations, if proven, would be extremely damaging.

93.2 However, the very point of the commission of enquiry is for such a body to independently enquire into the allegations and thereafter make findings in relation thereto. The EFF in effect seeks to elevate allegations into findings. Even the Public Protector did not do so.

94 AD PARAGRAPHS 22 - 71

94.1 The EFF has taken a series of allegations referred to in the Public Protector's report and attempts, through this application, to try and draw Eskom out into dealing with those allegations.

94.2 This is entirely inappropriate, particularly having regard to the remedial action actually proposed by the Public Protector.

M.K
Bing

94.3 In this regard, I state emphatically that Eskom would welcome the opportunity to deal with all of the allegations made against it as set out in the Public Protector's report.

94.4 Consequently, and whilst I deny the allegations herein contained, I do not deal with them because this is not the proper forum to do so.

95 **AD PARAGRAPH 72**

95.1 The allegations herein contained refer to press statements attributed to the former Minister of Mineral Resources, Mr Ramatlhodi.

95.2 There is no confirmatory affidavit of Mr Ramatlhodi attached to the EFF's application and the allegations herein contained are simply hearsay allegations.

95.3 To the extent that there were any such allegations actually made by Mr Ramatlhodi (and I do not admit that those allegations were made), they are denied.

M. K.
Brey

96 **AD PARAGRAPH 73**

96.1 I admit that allegations which have been made against Eskom's Board and Molefe, whether in the Public Protector's report or in certain press reports are damaging and serious.

96.2 The Public Protector, whose report forms the basis for the publication of the allegations has proposed by way of remedial action that the allegations be tested in a commission of enquiry. The EFF, through this application, is seeking to steal a march on the very remedial action which the Public Protector has proposed.

97 **AD PARAGRAPH 74**

97.1 I admit that Molefe issued a press statement on 11 November 2016.

97.2 The statement speaks for itself.

97.3 I will not attempt to deal with the content of the statement.

98 **AD PARAGRAPH 75**

These allegations are admitted.

M. K.
Zungu

99 AD PARAGRAPH 76

99.1 These allegations are admitted.

99.2 However, it is important to point out that Molefe did not resign as Eskom's Group Chief Executive. I have already dealt with this above and do not repeat what I have stated.

100 AD PARAGRAPHS 77 - 79

100.1 I have fully dealt with the circumstances and facts relating to the early retirement request by Molefe, Eskom's Board approval thereof, and the subsequent decision to rescind their approval and to restore the status quo. I do not repeat what has already been stated.

100.2 To the extent that allegations herein contained are inconsistent with what I have stated, I deny them.

101 AD PARAGRAPH 79

I have already dealt with these allegations earlier herein.

M.K.
Zug

102 AD PARAGRAPH 80

102.1 Eskom would welcome the appointment of the commission of enquiry so that the allegations made in the Public Protector's report, insofar as they relate to Eskom and Molefe, can be fully dealt with and tested.

102.2 It is true that a cloud continues to hang over the reputations of both Molefe and Eskom. This is not though of their doing. This is as a result of untested allegations having been made against them. Both Eskom and Molefe have repeatedly stated that they look forward to the opportunity, in the proper forum, to deal with those allegations properly.

103 AD PARAGRAPHS 81 & 82

I have already dealt with the allegations herein contained earlier and do not repeat what I have stated.

104 AD PARAGRAPH 83

104.1 The facts relating to the matters dealt with herein have already been dealt with by me above.

M.K.
Bing

104.2 Consequently, I do not repeat what I have stated. I do though deny any of these allegations insofar as they are inconsistent with what I have stated above.

105 AD PARAGRAPHS 84 & 85

105.1 I have already dealt with the allegations herein contained earlier in this affidavit. I do not repeat what I have stated.

105.2 However, to the extent that there are any averments herein contained which are in conflict with what I have previously stated, I deny these allegations.

106 AD PARAGRAPH 86

Having regard to what I have stated above I deny the allegations herein contained.

107 AD PARAGRAPHS 87 - 91

107.1 The matters herein contained are matters for legal argument.

M-16
Fug

107.2 They will be dealt with, to the extent necessary, at the hearing of this application.

108 **AD PARAGRAPH 92**

I do not take issue with these allegations.

109 **AD PARAGRAPH 93**

109.1 I repeat what I have stated above.

109.2 Molefe's departure from Eskom was on account of the early retirement agreement which has since been rescinded.

110 **AD PARAGRAPH 94**

These allegations are noted.

111 **AD PARAGRAPHS 96 - 102**

The allegations herein contained are matters for legal argument which will be dealt with at the hearing of this application.

M. K.
Fey

112 **AD PARAGRAPH 104**

These allegations are denied.

113 **AD PARAGRAPH 105**

These allegations are admitted.

114 **AD PARAGRAPHS 106 & 107**

These allegations are matters for legal argument which will be dealt with at the hearing of this application.

115 **AD PARAGRAPHS 108 - 110**

115.1 For reasons set out above, the allegations herein contained are denied.

115.2 In any event, they constitute matters for legal argument which will be dealt with at the hearing of this application.

M.K.
Bry

116 **AD PARAGRAPH 111 - 118**

116.1 To the extent that the allegations herein contained are inconsistent with the facts as I have set out above, they are denied.

116.2 In any event, what is set out herein constitutes matters for legal argument which will be dealt with at the hearing of this application.

117 **AD PARAGRAPH 119**

These allegations are denied.

118 **AD PARAGRAPH 121**

These allegations are denied.

119 **AD PARAGRAPH 122**

These allegations are denied.

*Mark
Bry*

120 AD PARAGRAPHS 12 (p 59) – 24 (p 62)

120.1 The factual premise of the allegations herein contained is incorrect. I have, however, already dealt with this previously herein and do not repeat what I have stated.

120.2 Beyond this, on the key aspects of *prima facie* rights, a reasonable apprehension of harm and the balance of convenience, the EFF does not demonstrate any of these elements. It merely asserts them. The EFF's contentions in this regard though are denied.

121 AD PARAGRAPHS 25 & 26 (p 62)

121.1 The basis upon which Molefe has returned to his post as Group Chief Executive has been explained above. I do not repeat what I have stated.

121.2 The Minister could not veto the rescission of the early retirement agreement as it was concluded on an incorrect and unenforceable premise.

121.3 Save as aforesaid, the allegations herein contained are denied.

Aug M.K.

122 AD PARAGRAPHS 27 – 29 (p 63)

122.1 The EFF has brought its application on an extremely short time framework, offering Eskom minimal time for the preparation of this answering affidavit in relation to the EFF.

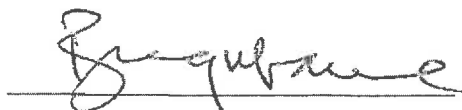
122.2 However, other than by assertion, the EFF has not fulfilled the requirements of justifying the urgency of its application under Part A. It relies substantially on speculation rather than fact.

122.3 The allegations herein contained, needless to say, are denied.

123 AD PARAGRAPHS 30 & 31

These allegation are noted.

WHEREFORE, Eskom prays that the EFF's application under Part A be dismissed with costs.


Deponent

m-k

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct.

This affidavit was signed and sworn to before me at
on this 22 day of MAY 2017 and the Regulations contained in
Government Notice R1258 of 21 July 1972, as amended, having been
complied with.



COMMISSIONER OF OATHS

Mduduzi Kingsley Mamkell
commissioner of oaths
practising attorney SA
ENSafrika 160 west street
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"ESKI"



The Honourable Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

REMUNERATION: MR B MOLEFE

The appointment of Mr. B Molefe as Chief Executive of Eskom with effect from 1 October 2015 has reference.

Please find set out herein, a proposal on his remuneration for your consideration.

The table below reflects the September 2015 benchmarks conducted by Mercer, PE Corporate Services and Deloitte Consulting for a Chief Executive of a large company.

| Article & Surname | Designation | Current TRANSNET Total Guaranteed Package 2015 | MERCOR Per Category LQ | MERCOR Per Category MEDIUM | MERCOR Per Category HQ | PE Corporate Services - LQ | PE Corporate Services - MEDIUM | PE Corporate Services - HQ | Deloitte AVERAGE |
|-------------------|-----------------|--|------------------------|----------------------------|------------------------|----------------------------|--------------------------------|----------------------------|------------------|
| B Molefe | CHIEF EXECUTIVE | 7 656 000 | 6 634 445 | 8 406 266 | 12 329 152 | 7 138 106 | 8 068 792 | 9 261 995 | 10 550 000 |

The benchmarks reflect that the current remuneration, as paid by Transnet, of Mr. Molefe is below the following statistical measurements, that is:

- 10.6% below the median of Mercer
- 5.4% below the median of PE Corporate Services and
- 37.9% below the average of Deloitte Consulting. The Deloitte benchmark is based on listed JSE companies of similar size.

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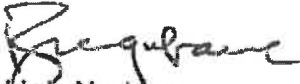
In keeping with his current remuneration paid by Transnet and taking the benchmarks into consideration, I submit for your approval the following annual recommended total guaranteed remuneration package:

| EXECUTIVE | POSITION | TOTAL GUARANTEED PACKAGE |
|-----------|-----------------|--------------------------|
| B Molefe | Chief Executive | R7 658 000.00 |

Minister's favorable consideration hereof would be appreciated. Should Minister have any queries hereon, please do not hesitate to contact me.

Thanking you in anticipation.

Yours sincerely


Dr Balewin Ngubane


CHAIRMAN

Date: 16/10/15

APPROVED

Ms Lynne Brown (MP)
MINISTER OF PUBLIC ENTERPRISES

Date:

M.K


"ESK2"



MINISTRY
PUBLIC ENTERPRISES
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DanielSM@eskom.co.za

Dear Dr Ngubane

Re: Remuneration of Mr B Molefe: Chief Executive of Eskom

Your letter regarding the above-mentioned matter, dated 16 October 2015, has reference.

After having seen the contract of employment between Mr Brian Molefe and Transnet SOC Limited and the recommendations of the Board, I hereby approve the total guaranteed remuneration of R7 656 000.00 to Mr Molefe with effect from the date of appointment.


Following my letter to you, dated 2 October 2015, Cabinet further noted the appointment, subject to the period of employment being confirmed. In this regard, it is my view and that of Cabinet that the period of employment be stipulated as five (5) years, subject to annual performance reviews.

The specified term of the employment contract must also apply to the Chief Financial Officer.

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I look forward to receiving the draft employment contract and performance agreement as requested in the aforementioned letter.

Yours sincerely


MS LYNNE BROWN, MP
MINISTER OF PUBLIC ENTERPRISES

DATE: 1/11/2015

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STRICTLY PRIVATE AND CONFIDENTIAL

Mr B Molefe

Dear Brian

OFFER OF EMPLOYMENT

I have pleasure in confirming your appointment in the following position:

Designation: **GROUP CHIEF EXECUTIVE**

1. Conditions

You will be required to enter into a fixed term Employment Contract. This Offer of Employment is also subject to Eskom's Conditions of Service - abridged version attached.

2. Remuneration Package

Your remuneration package will be structured as follows:

- Total guaranteed package of R 7 656 000.00 per annum.
- 70% of the total guaranteed amount will be deemed to be pensionable earnings as a basis for the calculation of certain benefits, for example, pension fund.
- The package may be structured to provide for a car allowance and 13th cheque.

In addition, the package will be influenced by factors described below.

3. Deductible Benefits

Deductions are applicable to the following benefits:

- Pension Fund -- A contribution of 20.8% will be calculated on pensionable earnings of 70% in accordance with the rules and regulations of the Eskom Pension and Provident Fund.

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Megawatt Park, Maxwell Drive, Sunninghill, Sandton
PO Box 1091, Johannesburg, 2000 SA
Tel: +27 11 800 2030 Fax: +27 11 800 5803 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/01532/730

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OFFER OF EMPLOYMENT (Continue)

- Medical Aid – Subject to your agreement with the Chairman that you continue with your chosen medical aid, you will be required to subscribe to one of the Eskom approved Medical Aid Schemes (presently Besimed, Bonitas or Medihelp).
- Death Benefit Scheme (Funeral Policy) – The payout related to this scheme is equal to R15 000.
- Group Life Cover (non-taxable). This benefit is calculated at three times your total guaranteed package.

4. Taxable benefits

The following benefits are taxable:

- Supplementary Medical Cover.
- Stated Benefits (Disability Cover).
- Installation or upgrade / maintenance of a security system at your home will be borne by Eskom, however, the entire benefit (including installation and guarding services) received by you will be taxable. The asset will depreciate over a period of 3 years in terms of the executive protection policy. Should you resign before expiry of the three year period, you will be liable to reimburse Eskom equal to the depreciated value.
- You will be liable for the tax portion of all tax counselling and financial planning fees, limited to R12 000.00 per annum.
- Bank fleet card for operating and maintenance expenses on your car.

5. Non-taxable Benefits

The following benefits are non-taxable:

- Use of the Executive gymnasium at Megawatt Park Health Centre.
- Payment of Professional fees (maximum of 2 work related institutions).
- Group Life Cover – equal to three times annual pensionable earnings.
- Home installed telephone for business usage.

6. Short Term Incentive Scheme (STI) - Annual Performance Bonus

Annual performance ratings are determined according to predetermined targets and resultant payouts are taxable.

7. Long Term Incentive Scheme (LTI)

As an executive, you will automatically participate in Eskom's Long Term Incentive Scheme, which is based on annual taxable grants vesting over periods of three (3) years. In the event of the vesting date occurring beyond the specified term of the contract, all such granted values would be deemed to have accrued to you and will be calculated as part of the final payment to you. Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.

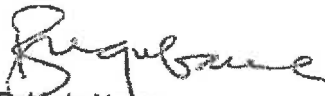
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OFFER OF EMPLOYMENT (Continue)

Please sign below, acknowledging receipt of this letter, and return it to me at your earliest convenience. Your appointment is effective from 1 October 2015.

An appointment will be arranged to discuss the structure of your total package to suit your personal tax requirements and other needs. **Anton Minnaar and his Executive Support Team will assist you with all the support functions.** Please contact Anton directly on tel. (011) 800-3088.

Kind regards

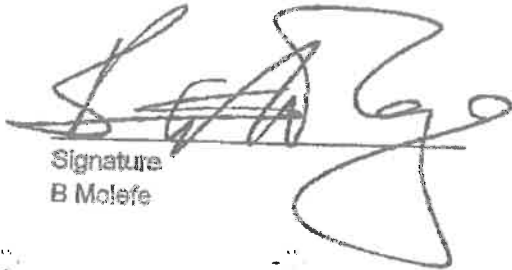


Dr Baldwin Ngobane

CHAIRMAN

Date: 09/11/15

ACKNOWLEDGMENT OF RECEIPT:



Signature
B Molefe

11.11.15.
Date

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"ESK4"



The Hon Ms Lynne Brown (MP)
Minister of Public Enterprises
Infotech Building, Suite 401
1090 Arcadia Street
Hatfield
Pretoria
0001

Dear Minister

RETIREMENT ARRANGEMENTS – BRIAN MOLEFE

As requested by the minister, Eskom is currently drafting the Group Chief Executive's 5 year contract for the minister's input.

As part of the drafting process, however, an important principle regarding Mr Molefe's retirement fund needs to be addressed and I request the minister's prior approval before we submit the draft contract for further input.

It is a fact that the growth in retirement investments and pension funds start off slow but increases exponentially towards the end of an employee's working life. Mr. Molefe has served in numerous high ranking South African organisations at executive level, essentially to stabilise and ensure the future sustainability and performance of those organisations. Due to the nature of these engagements and the short term contractual obligations in Mr Molefe's case, he has not been able to benefit from the growth opportunity in a single pension fund.

To breach this gap, the following contractual stipulations are proposed:

- Regardless of Mr Molefe age after the 5 year termination date, he be allowed to retire from Eskom's service on the basis that he is aged 63.
- That the penalties prescribed by the Eskom Pension and Provident Fund (EPPF) for retirement prior to age 63, be waived.

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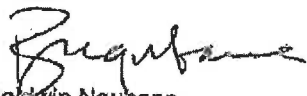
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RETIREMENT ARRANGEMENTS –BRIAN MOLEFE (Continued)

- That Eskom carries the cost of such penalties (to be paid over to the EPPF).
- In the event that Mr Molefe's contract is not extended beyond the 5 year termination date, he will not be allowed to subscribe to any other SOC or government pension fund.
- Should the contract be extended, however, it is important to note that the cost of any subsequent penalties (actuarial value) will decrease proportionately.

I trust that this will receive the minister's favorable approval.

Yours sincerely



Dr Balewin Ngubane

CHAIRMAN


Date:

25/11/15

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"ESKS"

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|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

**MINUTES OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 07-2015/16
HELD ON TUESDAY 9 FEBRUARY 2016 IN THE HUVO NKULU BOARD ROOM, EXECUTIVE
FLOOR, MEGAWATT PARK**

STRICTLY CONFIDENTIAL

PRESENT

Members

| | |
|----------------|-------------------------------|
| Ms V Klein | Chairperson |
| Ms N Carrim | Member |
| Mr B Molefe | Group Chief Executive ("GCE") |
| Dr B S Ngubane | Member |
| Mr Z Khoza | Member |
| Ms C Mabude | Member |

Officials

| | |
|--------------|---------------------------|
| Mr A Minnaar | Executive Support Manager |
| Ms S Daniels | Company Secretary |

APOLOGIES

| | |
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| Mr L Giovanni | Member |
|---------------|--------|

1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as above were noted.


3. QUORUM

A quorum being present, the Chairperson declared the meeting duly constituted.

4. DECLARATION OF INTERESTS

There were no declarations pertaining to items on the agenda and a declaration of interest register was circulated for signature.

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|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

RESOLVED THAT:

7.4.1 the alignment of the Board fee structure between that of Eskom and Transnet be recommended to the Minister of Department of Public Enterprises for approval.

The Chairperson noted the significant efforts of the Board Chairman to date to correct the misaligned Board fee structure.

7.5 Group Chief Executive: Conclusion of contract

Mr Minnaar reminded the meeting that the Minister had requested that the contract be concluded for a 5 year period and that she had also requested to have oversight over the contract. In addition, Eskom was given until the end of January 2015 to conclude the matter. A letter had however been addressed to the Minister regarding the retirement of the GCE and a response was awaited.

Mr Minnaar noted that a fixed term contract of 5 years at this level was a first for Eskom and was also not aligned with best practice. He explained the negative impact of this on the retirement benefits of the relevant individuals (GCE and CFO) and proposed that approval be granted for remedial action based on past practices and precedents in Eskom to counter this impact, which could include additional pensionable service being granted and/or penalties being waived. Mr Minnaar quoted a number of examples where this had been done in Eskom in the past.


Mr Minnaar thereafter spelled out the required resolution noting the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund rules. The request was for the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up the shortfall in years, waive the penalties and refund to the Pension and Provident Fund the actual cost relating to the additional service. He explained that refunding the cost would not reflect as emoluments of the executive director in question as this would constitute a transaction between Eskom and the Fund only with no money being paid to the individual.

The Chairperson summarised her understanding of the proposal as far as it would relate to the GCE. In respect of the CFO, the matter would be more complicated as he would not be 50 years of age at the time that the fixed term contract came to an end. The meeting enquired whether a proposal could be considered for the CFO and tabled for consideration in due course.

RESOLVED THAT:

7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;

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|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

7.5.2 In cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;
- ii. waive penalties applicable to early retirement; and
- iii. refund EPPF actual costs for additional service added, plus penalties applicable to early retirement; and

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting *Reference Document 5.1(a)*

The minutes of the In-Committee meeting No. 06-2015/16 held on 22 October 2015, having been circulated, were considered. The Chairperson requested that the minutes be carefully reviewed to ensure correctness. She noted, for example, an error in the minutes that needed to be corrected. The Company Secretary confirmed that the wording of the relevant item would be revised accordingly. The Chairperson furthermore noted that discussions around the travel policy and appointment of non-executive directors on the board of subsidiary companies had been discussed. The Company Secretary was requested to consider the matter based on the provisions of the Eskom Memorandum of Incorporation.

RESOLVED THAT:

- 8.1.1 the minutes of the People and Governance Committee In-Committee meeting No. 06-2015/16 held on 22 October 2015 are approved as an accurate reflection of the proceedings, subject to the proposed amendments; and
- 8.1.2 the Chairperson of this meeting is duly authorised to sign the minutes.


9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising *Reference Document 6.1(a)*

The Action List as included in the meeting papers was **NOTED**.

10. GENERAL

There were no further matters for discussion.

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"ESK 6"

RESOLUTION

AT ITS MEETING ON 9 FEBRUARY 2016, THE PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD RESOLVED THE FOLLOWING:

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.

2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:
 - i. Bridge the gap to make up for the 10 years'
 - ii. Waive penalties applicable to early retirement
 - iii. Refund EPPF actual costs for additional service added, plus penalties applicable to early retirement



Dr B S Ngubane

CHAIRMAN: ESKOM



Ms V J Klein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

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"ESK7"

Member's guide to benefits

A member of the Eskom Pension and Provident Fund (The Fund) participates in a defined benefit pension fund. This means that the member will retire or withdraw in terms of certain defined formulae detailed in the rules of the Fund. For example, when a member retires, he/she will receive a pension from the Fund that will depend largely on the number of years service to the company and salary at retirement. Should you however withdraw before retirement, the benefit that you will receive will be based on accrued value as determined by the formula.

As a member of the Fund you will receive regular benefit statements that will give you an estimate of your pension at retirement in present value every year.

This brochure aims to set out the rules of the Fund. It is in a member's best interest to read this brochure and to contact the Fund if there are any questions or concerns.

1. MEMBERSHIP OF THE EPPF

All permanent employees of employers that participate in the Fund, who are younger than the normal retirement age (65), and pay monthly contributions to the Fund, are deemed to be members of the Fund.

Pensioners who receive a monthly pension from the Fund are also part of the membership of the Fund.

2. CONTRIBUTIONS TO THE FUND

The member and employer contribute fixed percentages of salary as monthly contributions to the Fund.

Members

1. Members contribute 7,3% of their pensionable salaries to the Fund every month.
2. However, due to historical reasons, there are still a few members who contribute 4 % or 6 % of their pensionable salary.
3. Former non-contributory members, who were in service before the 1st of August 1964, now contribute 7.3% of their basic salaries. For the calculation of retirement or death in service benefits, the pensionable salary will be increased by a factor of 25%.

Note: 4 % and 6 % members can no longer choose to convert to 7.3% membership.

Employer contributions

The Employers contribute 13,5% of the members' pensionable salaries on behalf of the members.

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ADDITIONAL CONTRIBUTIONS

1. Additional voluntary contributions

A member may elect to contribute additional amounts into the Fund in order to boost retirement benefits. These extra contributions will be administered in the Additional Voluntary Contribution Scheme and the member will be able to access the money on withdrawal or retirement.

Lump sum amounts, such as transfers from previous employers' retirement funds, can also be invested in the Scheme.

The member's contribution may vary from month to month, with no limit to the amount. However, the maximum tax deduction that SARS will allow is R 1 800 per annum, which is treated as an arrear contribution to a pension fund, implying that any additional contribution more than R1 800 per annum, will be made from after tax money. The Fund issues tax certificates at the end of February every year, which need to be submitted to the Receiver of Revenue, in order to qualify for a tax deduction. Balance certificates are also issued, to show the growth for the year.

Note: The application forms are available from the employer's HR department or on the Fund's website.

(For more details on the Fund's Additional Contribution Scheme, please see item 5.)

2. Performance bonus contributions

Contributions to the Fund are also deducted when performance bonuses are paid. Members pay 7,3% of their performance bonuses as a contribution and the employer pays 13,5% on behalf of the member. These contributions are invested for the member in the Performance Bonus Contribution Scheme.

3. BENEFITS OF THE FUND

Benefits are defined in terms of the Rules of the Fund.

3.1 BENEFITS PAYABLE ON WITHDRAWAL

Withdrawal benefits refer to benefits payable upon resignation, dismissal or abscondment.

The Minimum Individual Reserve payable to a member must be the greater of the Accumulated Contribution or the Fair Value.

Accumulated Contribution - the Fund calculates the capital value of the member's accumulated past contributions (the total amount of money the member has paid into the Fund) plus interest. The rate of interest after December 2001 must compare reasonably with the actual rate of investment return that the Fund has earned on its assets.

Fair Value - the Fund must calculate the value of the "accrued deferred pension", which is the amount of pension that a member has earned for past service up to the date of leaving the Fund, based on the member's salary at the date of leaving the Fund.

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The capital value of this amount is calculated using financial assumptions, including items such as the rate of future salary increases and future investment returns.

The Pension Funds Act prescribes the assumptions used in calculating the above benefits.

3.2 RETRENCHMENT

The Minimum Individual Reserve payable to a member must be **the greater** of the Accumulated Contribution, or the Fair Value, or the Retrenchment benefit.

Retrenchment benefit - Three times the member's own contributions (the total amount of money the member has paid into the Fund).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are added to the above withdrawal benefits.

Note: When a member withdraws from the Fund, only the first R 1 800 is tax free, the balance is taxable at the member's marginal tax rate.

Options on withdrawal

The following options are available on withdrawal:

- a) Transfer the full benefit to an approved pension fund (such as a new employer's fund), retirement annuity (individual pension plan bought from an insurer where the member keeps making contributions) or a preservation fund (bought from an insurer to preserve benefits, but no future contributions allowed).
- b) Take the maximum tax-free amount (R1 800) and transfer the balance to an approved pension fund or a retirement annuity.
- c) Take the full benefit in cash.
- d) Take R1 800 tax-free and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme. (For full details about the Deferred Pension Scheme, please see item 4.)
- e) Transfer the full actuarial value into the Fund's Deferred Pension Scheme.
- f) Withdraw the accumulated contributions and defer the remainder of the actuarial value into the Fund's Deferred Pension Scheme (Retrenchment only).

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional withdrawal benefits.

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3.3 RETIREMENT BENEFITS

The following retirement options are available:

Note: all retirement benefits are calculated on the following basic formula:

***Final Average Emoluments x Service in months x pension rate**

(*Final Average Emolument = Final Average Pensionable Salary)

a) Normal retirement

All members must retire from the Fund at the end of the month in which they reach the age of 65.

b) Early retirement with penalty

A member may elect to take early retirement between the ages of 55 and 63, but penalties apply: The member's annual pension is reduced by 3.9 % per annum or .325 % per month until age 63. The employer's approval is not required.

c) Early retirement without penalty, without potential service.

A member between the ages of 50 and 63 may go on early retirement without penalty and without potential service by mutual agreement with the employer, where the employer will pay for the cost of early retirement (i.e. the penalty). Members between the ages of 50 and 55 need to have contributed to the Fund for a minimum of ten years in order to qualify for this benefit.

A member between the ages of 63 and 65 may retire without penalty and without potential service with no reduction in benefits or costs to the employer. The employer's approval is not required.

d) Early retirement with separation benefits.

A member between the ages of 50 and 65, who has contributed to the Fund for a minimum of 10 years, may go on early retirement with separation benefits and without penalties, by mutual agreement with the employer.

The member will be granted an additional 10% of his actual service as part of his benefits.

The employer will carry the cost of early retirement (including the 10 %) and any extra service that might be granted by the employer over and above the 10 %.

e) Retirement due to ill health

A member, who is permanently physically or mentally disabled and is granted an ill-health retirement benefit in terms of the Rules of the Fund, will, in addition to actual service, receive an additional 75 % of potential service up to age 65. There is no age or minimum service requirement.

Options on retirement

A member may:

- Take a monthly pension for life plus a maximum of one-third lump sum, or
- Take a monthly pension for life plus the maximum tax-free lump sum (not more than one third), or
- Take a monthly pension for life plus any nominated amount of lump sum (not more than one third), or
- Choose not to take a lump sum, but to receive an increased monthly pension for life.

Note: The accumulated balances in the Additional Voluntary Contribution and Performance Bonus Contribution Schemes are utilised as additional retirement benefits.

3.4 DEATH BENEFITS

All death benefit claims are investigated and adjudicated subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen may be taken into account. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death in service with dependants

Death benefit lump sum

If a member dies in service and is survived by a spouse and/or eligible children and/or other dependants, the following death benefit lump sums are payable:

- a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution- and Performance Bonus Schemes will be paid to the surviving dependants as a lump sum death benefit.
- b) In case of minor children, their portion of the death benefit will be invested in the Fund's instalment lump sum account or in an external trust account until age 21.
- c) The benefit will be divided per household if there is more than one household.

Note: Eligible children refers to the member's own children under the age of 21, and/or legally adopted children, or a disabled child over the age of 21.

Monthly pension

If a member dies in service and is survived by a spouse, and/or eligible children, the following monthly pension benefit is payable:

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An annual pension will be calculated (including potential service to age 65 years). The spouse qualifies for 60% of this benefit, while a spouse with one eligible child qualifies for an additional 30% of the benefit. (This amounts to 90% of the benefit in total.) If the spouse has two or more children, the household then qualifies for 100% of the benefit.

- Notes: 1) The benefit will be divided if there is more than one household.
2) A disabled child receives a pension for life.

Death in service without dependants

If a member dies without leaving a surviving spouse, eligible children, or any other dependants, the **greater** of two death benefit lump sum calculations as shown below will be payable to his /her estate:

a) Twice the member's annual pensionable salary plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.

b) Final average salary multiplied by the member's actual service, divided by 120 plus once the member's annual pensionable salary, plus the accumulated values in the Additional Voluntary Contribution and Performance Bonus Schemes.

Death in service with a live-in partner relationship

If a member dies in service and the Fund receives a claim from a live-in or common-law partner, the Fund will apply the dominant/servant relationship test where the partner who was a member of the Fund was dominant in the relationship, with the surviving partner substantially dependent on the deceased. In such an event, the surviving partner may be considered to benefit from the lump sum death benefit.

If the surviving partner was not financially dependent on the deceased, but was nominated on the beneficiary nomination form, he/she may be considered for a portion of the lump sum death benefit.

Death after retirement with dependants

Death benefit lump sum

A lump sum of R3000 is payable to the surviving spouse, and/or eligible children and / or other dependants, if any.

Monthly pension

If a pensioner dies and is survived by a spouse, and/or eligible children, the Fund will recalculate a monthly pension based on the original value of the annual pension at retirement (disregarding the amount already paid as a lump sum at retirement) plus all increases the pensioner received while on retirement.

The spouse will receive 60 % of the recalculated pension for life, even if he/she remarries.

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Plus

A further 30 % for one eligible child or 40 % for two or more eligible children until they turn 21 years.

If a pensioner dies and is survived by one eligible child only (no surviving spouse), the child will receive 60 % of the recalculated monthly pension until age 21.

If a pensioner dies and is survived by two or more children, they will receive 100% of the recalculated monthly pension until age 21.

Death after retirement without dependants

Death benefit lump sum (payable to the estate)

A lump sum of R3000.

Plus

The **greater** of the excess benefit (if any) as defined below:

- a. Twice the member's annual pensionable salary at the time of retirement less total benefits already paid (lump sum plus monthly pension); or
- b. The member's annual pensionable salary at the time of retirement plus 10 % of the member's final average salary for each completed year of pensionable service, less total benefits already paid (lump sum plus monthly pension paid).

4. DEFERRED PENSION SCHEME

General conditions

When a member resigns or is granted a retrenchment benefit, he/she has an option to defer his/her transfer value into the Deferred Pension Scheme.

The value of the deferred benefit is calculated by using the retirement formula in the Rules.

The following conditions are applicable:

- a) The decision to defer is irrevocable once made.
- b) No further additional contributions are allowed into the deferred scheme.
- c) Interest, compounded on a monthly basis is added to the member's value in the deferred scheme at an interest rate reviewed by the Board of Trustees on a quarterly basis.
- d) The Board of Trustees may declare bonuses on the Scheme, depending on the Fund's investment performance.
- e) The member can only retire from this Scheme at any time from age 55, but not later than age 65.

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Note: Updating personal and address details are very important, as the Fund sends out a statement to show the member's balance in the Scheme in March of every year.

Benefits applicable to the Scheme

Retirement benefits

At the date of the commencement of the pension a member may elect to receive a lump sum in cash of up to one-third of the accumulated value (transfer value, interest and bonuses, if any) in the Scheme. The balance shall be utilised to provide a monthly pension for life.

The member may choose instead not to take a lump sum, but to receive an increased monthly pension.

Death benefits

All death benefit claims are investigated and considered for payment subject to the provisions of Section 37C of the Pension Funds Act, which deals with the distribution of lump sum death benefits.

In order to arrive at a decision on the distribution of a death benefit lump sum, the Board of Trustees will consider, inter alia, the dependants' ages, extent of dependency, relationship, the amount of the death benefit lump sum and financial acumen. Dependency will be confirmed by conducting interviews with family, friends, tribal authorities, colleagues and so on.

Death before retirement

If a member dies before retirement from the Scheme, the accumulated, of the members, value is paid as a lump sum to the dependants, or to the member's estate if there are no dependants.

No monthly pension is payable to the dependants.

Death after retirement with dependants

If the member is survived by the spouse he/she had at the date of the commencement of the pension, a life-long pension equal to 60% of the member's monthly pension at date of death is payable.

If there are eligible children, a pension is payable to them until age 21.

Death after retirement without dependants

If the member does not have dependants, the pension ceases on the death of the member.

If the member re-marries after the commencement of the pension, the new spouse is not entitled to a monthly pension from the Scheme upon the death of the member.

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5. ADDITIONAL VOLUNTARY CONTRIBUTIONS SCHEME

In order to enhance their pension benefits at retirement, members can contribute additional amounts to the Fund's Additional Voluntary Contribution Scheme.

Benefits from any other approved retirement arrangement (such as the withdrawal benefits from a previous employer) may be transferred to this Scheme when joining the EPPF.

Members can make lump sum payments into the Scheme at any time.

Members can also contribute on a monthly basis to the Scheme and may increase or decrease their monthly contributions at any time.

In terms of the Pension Funds Act, contributions are not refundable until termination of service and members may not take a loan from the Scheme. No other person or institution may claim the member's monies from this Scheme.

Monthly and lump-sum contributions up to a maximum of R1 800 per annum are currently tax deductible.

The R1 800 per annum tax deduction is over and above the amount deductible in respect of normal pension fund contributions and any contributions towards a retirement annuity fund.

A tax certificate in respect of contributions to the Scheme, together with a certificate reflecting interest and bonuses earned, is issued annually in February.

If a member elects not to defer the pension benefits upon withdrawal, the accumulated value in the Scheme will be refunded to the member.

At retirement the Fund will convert the accumulated value in the Scheme into a pension. A member can elect to take one third of this amount as a lump sum, or choose not to take a lump sum in order to receive a bigger amount as a monthly pension.

As for the normal pension, the additional pension benefit is guaranteed for life and the life of the member's spouse and for any children as long as they are eligible.

The Board of Trustees reviews the interest rate on this and the Fund's other schemes, on a quarterly basis.

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Zug

6. HOW TO CLAIM BENEFITS

Benefit application forms are hosted on the Fund's website (www.eppf.co.za) and alternatively are available at local Human Resources Offices or the Fund's offices.

Important Notes to speed up payment of benefits:

1. Ensure that your personal details are always updated on your personal file at HR.
2. Ensure that you are registered with SARS as a taxpayer.
3. Ensure that benefit application forms are correctly and fully completed.
4. Ensure supporting documents are original certified copies and are attached to the benefit application forms.
5. Ensure that you understand the available options on the application forms, as well as the implications of the options elected. (Contact HR for information in this regard.)
6. If applicable, attach certified copies of divorce orders and the settlement agreements.
7. Ensure that your dependants know how to claim benefits.
8. Ensure that your beneficiary nomination form is always updated and kept at HR.

¹⁰ M.K.
Biq

"ESK8"

Eskom

EXECUTIVE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

entered into between

ESKOM HOLDINGS SOC LIMITED

(Registration No. 2002/015527/30)

and

BRIAN MOLEFE

(Identity No. 6612285778086)

[Handwritten signatures and initials]
Molefe
Molefe

WHEREBY IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND PRELIMINARY

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1. words importing

1.1.1. any one gender include the other gender;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely

1.2.1. "Act" means the Labour Relations Act, 1995 as amended;

1.2.2. "Agreement" means this agreement together with the annexures thereto;

1.2.3. "Associate Company" means an Entity in which the Company and/or its subsidiaries holds at least 30 % (thirty percent) of the interest of such Entity;

1.2.4. "Board" means the board of directors of the Company from time to time;

1.2.5. "Business" means each and every business undertaking engaged in by the Company and each and every Group Company from time to time;

1.2.6. "Business Day" means any week day, excluding Saturdays, Sundays and public holidays in the Republic of South Africa;

1.2.7. "Commencement Date" means 1 October 2015;

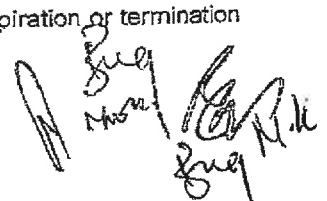
1.2.8. "Company" means Eskom Holdings Limited (Registration No. 2002/015527/30);

1.2.9. "Executive" means Brian Molefe (Identity No. 6612285778086);

1.2.10. "Entity" includes any association, business, close corporation, company, concern, enterprise, firm, partnership, person, trust, undertaking, voluntary association or other similar entity whether corporate or unincorporate:

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- 1.2.11. "Group Company" means the Company, any Associate company of the Company, any partnership in which the Company is a partner, any company which is a subsidiary company of the Company, any company which is a holding company of the Company, any company which is a subsidiary of or is controlled by such holding company, any division of such holding company and/or any joint venture company of which the Company or such holding company is a shareholder, and collectively referred to as "Group Companies";
- 1.2.12. "Parties" means the Executive and the Company and a reference to "Party" shall embrace each one of them individually;
- 1.2.13. "Pensionable Age" means 65 (sixty five) years of age;
- 1.2.14. "Signature Date" means the date of signature of this Agreement by the last signing of the signatories hereto;
- 1.2.15. "Termination Date" means the date upon which the Executive's employment by the Company ceases or is terminated for any reason whatsoever;
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.4. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days or Business Days is prescribed in this Agreement, same shall mean Business Days;
- 1.6. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this agreement as expressly provide that they will operate after any such expiration or termination

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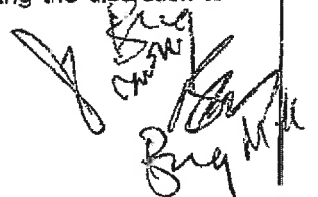
or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

2. APPOINTMENT OF EXECUTIVE

- 2.1. The Executive commenced employment with the Company on 1 October 2015.
- 2.2. With effect from the Commencement Date, the Company appoints the Executive as Group Chief Executive of the Company. The Executive accepts such appointment.
- 2.3. To the extent that the Executive is required to become a director of any Group Company, the Executive undertakes to be bound to any such Group Company on the terms of this Agreement *mutatis mutandis*. Each undertaking provided by the Executive in this Agreement shall also constitute a *stipulatio alteri* in favour of any Group Company and is capable of acceptance at any time by it.
- 2.4. The Executive will be employed at the Company's premises situated at Eskom, Megawatt Park, Maxwell Drive, Sunninghill or such other location as the Company may determine from time to time on notification to the Executive.
- 2.5. The Executive warrants in favour of the Company that he is not contractually or otherwise prohibited or limited from fulfilling his obligations in terms of this Agreement.

3. PERIOD OF EMPLOYMENT

- 3.1. The Executive's employment with the Company is based on a fixed-term contract that expires on 30 September 2020 ("the Termination Date"). The employment shall continue until this date subject to either Party being entitled to terminate the employment relationship by giving the other not less than 6 (six) months' written notice. The Company may elect to pay the Executive *in lieu* of notice.
- 3.2. Notwithstanding anything to the contrary contained herein, the Company shall be entitled to terminate the Executive's employment with or without notice or on such other basis as it considers appropriate for any reason justified in law.
- 3.3. In dealing with the Executive's conduct, performance or any other issue arising from or in relation to the Executive's employment with the Company, the Company shall be guided by, *inter alia*, the Company's disciplinary, performance management, grievance and other procedures applicable from time to time, with the Board specifically having the discretion to



appoint a non-executive director to chair any disciplinary, performance, grievance or other enquiry or utilise an external third party for that purpose.

4. EFFECT OF TERMINATION OF EMPLOYMENT

The termination of the Executive's employment for any reason whatsoever shall not affect the operation of any provisions of this Agreement to the extent to which they confer rights or impose obligations upon the Parties which are exercisable or enforceable after the Termination Date, and such provisions shall to that extent continue to be of full force and effect. The termination of the Executive's employment shall furthermore not prejudice any rights which have accrued to the Parties as at the Termination Date.

5. SUSPENSION OF EMPLOYMENT

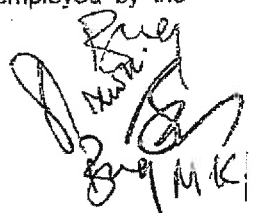
If the Company suspects that the Executive is guilty of the conduct which may, if proved, justify his dismissal, or has committed a breach of any of the terms of this Agreement, it may, pending a duly constituted enquiry into the alleged conduct in question, but without prejudice to its right of summary dismissal and without giving rise to any claim for damages or otherwise against it, suspend the Executive for a reasonable period having regard to the common law and the provisions of the Act and other applicable statutes during which the Executive shall -

- 5.1. not be entitled to attend work at the premises of the Company and/or any Group Company;
and
- 5.2. be entitled to his Remuneration Package.

6. DUTIES OF EXECUTIVE

The Executive shall -

- 6.1. satisfactorily, carry out, *inter alia*, the duties and responsibilities as are from time to time assigned to him, and which are consistent with his status, including, but not limited to, the key performance indicators which are agreed to on an annual basis with the Board;
- 6.2. devote the whole of his time and attention during the Company's normal business hours, and such reasonable amount of additional time as may be necessary, having regard to the exigencies of the Business, to the Business and shall not, while he is employed by the

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Company, without the Company's prior written consent, whether as proprietor, partner, director, shareholder, the holder of an option, member, employee, consultant, contractor, financier, agent, representative, assistant, whether for reward or not, directly or indirectly be interested or engaged in or concerned with or employed by any company, corporation, business, trade, undertaking or concern -

6.2.1. other than that of the Company and/or any Group Company; or

6.2.2. which competes with the Business.

the undertakings in clauses 6.2.1 and 6.2.2 being separate, provided that he shall not be deemed to have breached his undertakings by reason of -

6.2.3. his having *bona fide* financial interests in any business, trade, undertaking or concern which does not directly or indirectly compete with the Company and/or any Group Company and which has been disclosed to the Company in writing and/or after disclosing his intention to do so to the Company in writing, his accepting appointment as a non-executive director of or his acquiring a financial interest in any such business, trade, undertaking or concern and devoting a reasonable amount of time to such financial interests and directorships, provided that no such interests of or activities by the Executive are prejudicial to or adversely affect the performance of his duties hereunder; and/or

6.2.4. his holding shares (including derivatives) in any company the shares of which are listed on a recognised stock exchange if the shares owned by him (including indirectly through any other Entity) do not in the aggregate constitute more than 5% (five per cent) of any class of the issued share capital of such company; and/or

6.2.5. his being an officer of or holding shares in the Company and/or any Group Company;

6.3. obey the orders and directions of the Board and use his utmost endeavours to protect and promote the Business and interests of the Company and the Group Companies and to preserve their reputation and goodwill;

6.4. be true and faithful to the Company and all Group Companies in all dealings and transactions whatsoever relating to their business and interests; and

6.5. submit to the Board or to any person nominated by it, such information and reports as may be required of him in connection with the performance of his duties and the Business.

7 REMUNERATION

- 7.1. As remuneration for his services hereunder, the Company shall pay to the Executive a total annual guaranteed remuneration package of R7 656 000.00 (seven million six hundred and fifty six thousand rand) ("Remuneration Package"), less tax and other lawful deductions. The specific structure of the Executive's Remuneration Package will be agreed upon by the Company and the Executive as soon as possible after the Signature Date. The salary element of such amount shall be paid in 12 (twelve) equal monthly instalments and directly into the Executive's bank account monthly in arrears.
- 7.2. The Remuneration Package referred to in clause 7.1 shall be subject to annual review by the Company's remuneration committee in April of each year.

8. SHORT TERM INCENTIVE SCHEME

- 8.1. The Executive will be entitled to participate in the Company's short term incentive scheme in accordance with the rules applicable thereto from time to time.
- 8.2. The payment of any short term incentive will be taxable in the hands of the Executive but will not form part of the Executive's pensionable remuneration.

9. LONG TERM INCENTIVE SCHEME

- 9.1. The Executive be entitled to participate in the Company's long term incentive ("LTI") scheme in accordance with the rules applicable thereto from time to time. The broad principles of the LTI scheme have already been furnished to the Executive.
- 9.2. The payment of any LTI will be taxable in the hand of the Executive but will not form part of the Executive's pensionable remuneration.
- 9.3. In the event of the vesting date occurring beyond the specified term of the contract and the contract terminating on the Termination Date, all such granted values will be deemed to have accrued on the Termination Date and will be calculated as part of the final payment to you. Insofar as vesting after the specified term of the contract is dependent on targeted performance criteria the performance will be deemed to be "on target". Such final payment shall be fully inclusive of any amounts owed to you in terms of Eskom's Long Term Incentive Scheme rules.
- 9.4. On resignation by mutual agreement all Grants allocated will be payable on a pro-rated basis.

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 Eug M. K.

10. PENSION AND PROVIDENT FUND

- 10.1. The Executive shall continue as a member of the Eskom Pension and Provident Fund or any other such fund established or participated in by the Company from time to time, subject to the rules thereof.
- 10.2. The Company shall pay the Executive's monthly contributions to the fund on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

11. MEDICAL AID

- 11.1. The Executive shall continue as a member of the Company's Medical Aid Scheme or any other medical aid scheme that the Company may contract with from time to time, subject to the rules and regulations of that scheme.
- 11.2. The Company shall pay the Executive's monthly premiums to that scheme on behalf of the Executive, monthly in arrears, the cost of which forms part of the Executive's Remuneration Package contemplated in clause 7 above.

12. GROUP LIFE ASSURANCE AND FUNERAL BENEFIT

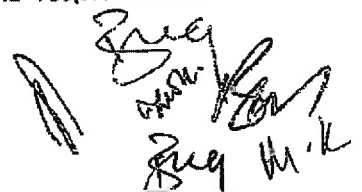
- 12.1. The Executive shall continue to be entitled to Group Life Assurance and Funeral Benefit Cover, subject to the rules and regulations applicable thereto from time to time.
- 12.2. The Company shall pay the Executive's contribution thereto on behalf of the Executive, monthly in arrears, the cost of which forms part of the Remuneration Package contemplated in clause 7 above.

13. ADDITIONAL BENEFITS

- 13.1. The Executive shall be entitled to the following additional benefits which are in addition to the Executive's Remuneration Package contemplated in clause 8 above

13.1.1. Bank Fleet Card

- 13.1.1.1. The Executive shall be entitled to use the Company's Bank Fleet Card, in order to conduct his duties and responsibilities for the



Company, the use of which is governed by the Company's rules and policies applicable thereto from time to time.

13.1.1.2. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

13.1.2. Financial/Tax Planning Fees

13.1.2.1. The Executive shall be entitled to receive both financial and tax planning advice, the reasonable costs of which will be borne by the Company in accordance with the rules and policies applicable thereto from time to time.

13.1.2.2. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.3. Personal Security

13.1.3.1. The Company is desirous of ensuring the safety of the Executive and the security of the Executive's residence.

13.1.3.2. The Company will bear the reasonable costs associated with the Executive's home security system, the installation and maintenance thereof, the monthly subscription to a security company, guards, vehicle tracking and armed response, in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.3.3. The Executive shall be responsible for all and any tax consequences arising therefrom.

13.1.4. Telephone Services

13.1.4.1. The Company will bear the costs of the Executive's telephone that is utilised for business purposes at the residence of the Executive and in accordance with the rules and policies of the Company applicable thereto from time to time.

13.1.4.2. The Executive is issued with a cell phone and the Company will bear the business usage costs thereof in accordance with the Company's rules and policies applicable thereto from time to time.

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 [Signature]
 [Signature] M.K.

13.1.4.3. The Executive shall be responsible for any taxes payable by him, in respect of any taxable personal benefit which he derives therefrom.

14. ANNUAL LEAVE

The Executive shall continue to qualify for annual leave in accordance with the Company's annual leave policy. The Executive acknowledges that he has had sight of that policy.

15. SICK LEAVE

The Executive shall continue to qualify for sick leave in accordance with the Company's sick leave policy. The Executive acknowledges that he had sight of that policy.

16. CONFIDENTIALITY

16.1. In performing his duties and responsibilities with the Company and/or any Group Company, the Executive will have access to non-public information or materials describing or relating to the Company and/or any Group Company, its clients and/or third parties to whom the Company and/or any Group Company has a duty of confidentiality (the "Third Parties") including, but not limited to, materials describing or relating to the business, affairs, processes, trade secrets, client lists, trade connections, policies and/or procedures of the Company and/or any Group Company; its clients and/or the Third Parties; formulae, strategies, methods, processes, computer materials (including but not limited to source or object codes, data files, computer listings, computer programs and other computer materials regardless of the medium in which they are stored), and/or other confidential information of the Company and/or any Group Company, its clients and/or the Third Parties (the "Confidential Information").

16.2. With respect to such Confidential Information, the Executive agrees that during his employment by the Company and thereafter in perpetuity, regardless of the reason for the termination of his employment, he shall:

16.2.1. hold the Confidential Information in strict confidence and will not, nor will he permit any other person to, copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give and/or disclose the Confidential Information to any unauthorised person;

[Handwritten signature]
 M.K.

- 16.2.2. take all reasonable steps to minimise the risk of disclosure of the Confidential Information to unauthorised persons, and to ensure the proper and secure storage of any such Confidential Information;
- 16.2.3. not, during his employment by the Company or thereafter, use for his own benefit or for the benefit of any other person or divulge or communicate to any person or persons, except to those officials of the Company and/or any Group Company whose province it is to know same, any of the Company's or such Group Company's secrets or any other Confidential Information which he may receive or obtain in relation to its affairs or its clients.
- 16.3. Upon the termination of his employment for any reason whatsoever, the Executive shall return to the Company any documents, papers and other materials relating to the Company or obtained or developed in the course of his employment by the Company and/or whilst providing services to any Group Company or containing or derived from the Confidential information in his possession, and all copies thereof.

17 INVENTIONS, DISCOVERIES, COPYRIGHT AND DOCUMENTS

- 17.1. Any discovery or invention or secret process or improvement in procedure made or discovered by the Executive in the course and scope of his employment by the Company in connection with or in any way affecting or relating to the Business or capable of being used or adapted for use by the Company and/or any Group Company or in connection with its business shall be disclosed to the Company and/or any Group Company and shall belong to and be the absolute property of the Company and/or any Group Company or any other company nominated by it.
- 17.2. The Executive shall, if and when required by the Company and/or any Group Company, apply or join with the Company and/or any Group Company concerned at its expense in applying for Letters Patent or other equivalent protection in the Republic of South Africa or in any other part of the world for such discovery, invention, process or improvement and shall at the expense of the Company and/or any Group Company concerned execute all instruments and do all things necessary for vesting the said Letters Patent or other equivalent protection in the name of the Company and/or any Group Company as sole beneficial owner or in the name of such other company as the Company and/or Group Company may nominate.
- 17.3. Insofar as may be necessary the Executive hereby assigns to the Company and/or any Group Company the copyright in all present and future works eligible for copyright, including, without

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B. J. M. K.
M. K.

limitation, literary or artistic works or software programmes of which he may be the author, which works were or are created, compiled, devised or brought into being during the course and scope of his employment by the Company and/or whilst providing services to any Group Company. No consideration shall be payable by the Company to the Executive in respect of this assignment.

17.4. All reports, manuals, financial statements, budgets, indices, research papers, letters or other similar documents (the nature of which is not limited by the specific reference to the foregoing items) which are created, compiled or devised or brought into being by the Executive or come into the Executive's possession during the course and scope of his employment by the Company (including whilst providing services to any Group Company) and all copies thereof will be the property of the Company and/or any Group Company and, upon the Termination Date or earlier if required by the Company and/or any Group Company, such documents and all copies shall be returned to the Company and/or any Group Company.

18. STIPULATIO ALTERI

Without derogating from the generality of clause 2.3 above, the undertakings given by the Executive in clauses 16 and 17 of this Agreement constitute a *stipulatio alteri* in favour of any Group Company and are capable of acceptance at any time by such Group Company, whether before or after the Termination Date.

19. GENERAL

19.1. The Executive shall adhere to the Company's written policies, procedures or the like which are applicable from time to time, save for where they have been amended by this Agreement.

19.2. No remedy granted by this Agreement shall exclude any other remedy available at law.

19.3. No amendment of this Agreement or any consensual cancellation thereof or any part thereof shall be binding on the parties unless reduced to a written document and signed by them.

19.4. If any of the terms of this Agreement, such as the rate of remuneration payable to the Executive, are varied, the other terms shall, unless otherwise agreed in writing, remain of full force and effect.

19.5. No relaxation or indulgence which either Party may show to the other shall in any way prejudice or be deemed to be a waiver of its rights hereunder nor shall such relaxation or

indulgence preclude or estop the other Party from exercising its rights in terms of this Agreement in respect of any further breach.

- 19.6. This Agreement constitutes the whole agreement between the Parties and no warranties or representations whether express or implied have been given or made by the Company to the Executive.
- 19.7 The Company shall be entitled to cede and delegate all or any of its rights and obligations under this Agreement to any Group Company, whether such cession and delegation takes place before or after the Termination Date.

20. **DOMICILIA CITANDI ET EXECUTANDI**

20.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses -

20.1.1. the Company:

Physical: Megawatt Park, Maxwell Drive, Sunninghill, Johannesburg
 Postal: P.O. Box 1091, Johannesburg, 2000
 Telefax: 011 800 6132

20.1.2. the Executive:

Physical: 759 Camelford Road, Cornwall Hill Estate, Irene, 0178
 Postal: P.O. Box 18, CORNWALL HILL, 0178
 Telephone: 012 6671885

- 20.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 20.3. Either Party may by notice to the other party change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in Gauteng or its postal address or its telefax number, provided that the change shall become effective on the 10th (tenth) Business Day from the deemed receipt of the notice by the other party.
- 20.4. Any notice to a Party -
- 20.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the

10th (tenth) Business Day after posting (unless the contrary is proved) and provided that any notice to a party sent by prepaid registered post shall only be valid if such notice is simultaneously sent by telefax to the chosen telefax number stipulated in clause 20.1;

20.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

20.4.3. sent by telefax to its chosen telefax number stipulated in clause 20.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

20.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

21. RESIGNATION

21.1. On the Termination Date, the Executive will *ipso facto* be deemed to have resigned as a director of the Company and any other Group Company of which he is a director at that date.

21.2. The Executive hereby irrevocably appoints the then auditors of the Company as his agent *in rem suam* to sign all such documents and to do all such acts as may be necessary to effect and implement such resignation.

22. ELECTRONIC AND OTHER COMMUNICATIONS

The Executive hereby expressly gives the Company permission to intercept, monitor, read, block or act upon any of the Executive's electronic and other communications made from the Company telephone, Company computer and other Company devices which shall include, but not be limited to, telephonic conversations, e-mails and any stored files.

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23. **RULES, REGULATIONS AND POLICIES**

The Company has various rules, regulations, policies and procedures ("the Policies") in place which may be amended from time to time in the sole discretion of the Company. The Policies may be accessed via the Company's intranet, alternatively copies may be requested from the Company's human resources department. It is the Executive's obligation to familiarise himself with all of the Policies and ensure that he complies therewith.

24. **SEVERABILITY**

If any provision of this Agreement is found by a court of law to be invalid or void, such provision shall be severed from the remaining provisions, which shall continue to be of force and effect.

25. **COSTS**

The costs of and incidental to the drawing of this Agreement shall be paid by the Company.

26. **ARBITRATION**

In the event that the Company's internal mechanisms contemplated in clause 3.3 above have been exhausted, then any dispute concerning the fairness or otherwise of the termination of the Executive's employment, the Executive's performance, a grievance lodged by the Executive, or any other dispute arising out of the Executive's employment that would, save for this clause, fall to be determined by the CCMA or a Court having the requisite jurisdiction, shall be finally resolved by arbitration conducted in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator agreed to by the Parties or, failing such agreement, appointment by that Foundation. The Company will be responsible for the costs of the arbitrator, the venue and any recording or transcription services related to any such arbitration.

Signed at *Megawatt Park* this 7th day of MARCH 2016.

Reg
M.K.

FOR: ESKOM HOLDINGS LIMITED

Signature:

who warrants that he / she is duly authorised thereto

Name:

B S Ngubane
B S Ngubane CHAIRMAN

Date:

15/03/16

Place:

Megawatt Park

Witness:

[Signature]

Witness:

[Signature]

Signed at Sandton this 7th day of March, 2016

BRIAN MOLEFE

Signature:

[Signature]
who warrants that he / she is duly authorised thereto

Name:

B Molefe GROUP CHIEF EXECUTIVE

Date:

7.3.16

Place:

SANDTON

Witness:

Witness:

[Signature] M.K

"ESK9"

Brian MOLEFE
P O Box 18, Cornwall Hill, 0178.
mbm1@mweb.co.za

11 November 2016

Dr. B Ngubane
Chairman
Eskom SOC
Megawatt Park
SUNNINGHILL

Sir

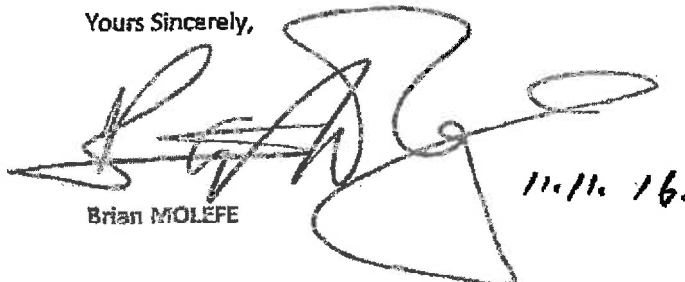
EARLY RETIREMENT –EMPLOYEE NO 4610263

I hereby request for approval for early retirement in terms of the rules of the Eskom Pension Fund read in conjunction with a resolution of the People and Governance subcommittee of the board dated 09 February 2016.

My last day of service will be 31 December 2016.

I would like to take this opportunity to thank the board for its guidance and leadership through very difficult times during my tenure as Group Chief Executive of Eskom.

Yours Sincerely,



11/11/16.

Brian MOLEFE

Mike
Bry

"ESK10"

Mr B Molefe
UN: 06102515

Dear Brian

EARLY RETIREMENT

Your letter dated 11 November 2016 is hereby acknowledged and it is confirmed that your last day in service will be 31 December 2016.

In terms of the rules of the Eskom Pension and Provident Fund (EPPF) and Board resolution, your early retirement is approved.

The following payments are due to you:

- o Salary up to 31 December 2016 (also refer "Suspense Account" below).
- o Accrued leave pay.
- o Short Term Bonus calculated on your Pensionable Earnings (nine months proportional bonus based on a 50% on-target performance).
- o Payments in terms of the LTI Scheme. Currently, there are two grants outstanding according to the letter dated November 2016, namely:
 - o Grant 11 that was awarded in April 2015 and vests in March 2018
 - o Grant 12 that was awarded in April 2016 and vests in March 2019

In terms of the rules of the scheme, the LTI payments will be made as soon as possible after the two vesting dates. Both grants will vest at 50%.

1. Pension Fund

Your early retirement has been approved in terms of EPPF rule 28 and 21.4, which means that penalties will be waived and that potential service to age 63 is granted.

M. K.
Zug

2. Suspense Account

To make provision for any other unforeseen costs after your retirement date, an amount of R15,000.00 will be retained in a suspense account for this purpose. Costs incurred after resignation normally relate to taxable expenses associated with the Bank Fleet card and security services.

3. Occupational Diseases

Any claims against Eskom for occupational diseases is subject to an Eskom exit medical examination report issued by your nearest Eskom medical centre. Otherwise, no claims will be considered.

4. Certificate of Service

A certificate of service covering the period of your employment with Eskom will be handed to you on 31 December 2016.

5. Eskom Property

Any other Eskom equipment in your possession, including the following should be returned to Executive Support (Megawatt Park, C3 U41) on 31 December 2016.

- Eskom security permit
- Bankfin petrol card and e-tag
- Samsung Slate
- 3G card


Eskom has copyright on all documents, records and any other material which you may have prepared or have come into possession since your employment starting date with Eskom. It is necessary that this should remain in Eskom's possession.

6. Tax Certificate

An IRP5 tax certificate in respect of the 2016 / 2017 tax year will be issued.

I wish you every success for the future.

Yours sincerely


Mr Baldwin Ngubane
CHAIRMAN
Date: 24/11/16

M-h 2
Juy



MINISTRY
PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA

Private Bag X15 Hatfield, 0028 Suite 301 InfoTech Building 1090 Acadia Street Hatfield
Tel: 012 431 1118/1150 Fax: 012 431 1039 Private Bag X9078, Cape Town, 6000 Fax: 021 435 2381

To: All Media
Date: 23 April 2017
For Immediate Release

Minister Brown declines Brian Molefe's pension pay-out

The Minister of Public Enterprises, Ms Lynne Brown, has declined Eskom's proposal to pay its former Group Chief Executive, Mr Brian Molefe, a R30-million pension pay-out.

"I have considered the Eskom Board's reasoning in formulating the proposed pension payout and cannot support it.

"I found the argument presented by the Board on why the pension arrangement was conceived lacking in legal rationale, and it cannot be substantiated as a performance reward because Mr Molefe has already been granted a performance bonus for his contribution to the turnaround of Eskom.

"Nor is the proposed pension payout justifiable in light of the current financial challenges faced not only by State-Owned Companies (SOCs), but by the country as a whole.

"I have in the past asked Eskom and the other five SOCs in my portfolio to demonstrate financial prudence and social consciousness when considering executive emoluments.

"Given that I was not a party to the contract of employment concluded between the Eskom Board and Mr Molefe, I have instructed the Board to urgently engage Mr Molefe and report back to me with an appropriate pension proposal within seven days.

"It is unfortunate that such a sensitive and private matter was handled so recklessly.

"Finally, I have asked the Board to investigate how its proposal got into the public domain prior to my having had the opportunity to consider it," Minister Brown said.

For enquiries contact Colin Cruywagen on 082 3779916.

issued by the Ministry of Public Enterprises

23 April 2017

M.K
Bry

"ESK12"



Brian Molefe

Dear Brian

YOUR APPLICATION FOR EARLY RETIREMENT

In view of the latest development around your retirement from Eskom, as well as engagement with our shareholder minister, the board has had to review its decision of 21 November 2016.

Having considered all the matters at hand, particularly that our shareholder minister does not support our decision, we have resolved to rescind our decision. Therefore, you are hereby requested to resume your duties as the Group Chief Executive of Eskom.

We are cognisant of the potential impact on your current role, but given the circumstances, we are convinced that this move would be in the best interest of South Africa and its people.

We look forward to your favourable response.

Yours sincerely

Dr BS Ngubane
CHAIRMAN
Date: 3 May 2017

ACCEPTED/DECLINED

BM Molefe
Date: 3 May 2017

M. K.
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"ESK13"

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**MINUTES OF THE SPECIAL ESKOM BOARD MEETING 03-2017/18 HELD ON 2 MAY 2017
AT THE CHAIRMAN'S OFFICE, MEGAWATT PARK, SUNNINGHILL AT 14H00**

PRESENT

Board Members

| | |
|----------------------|--------------------------------------|
| Dr BS Ngubane | Chairman |
| Mr ZW Khoza | Non-executive director |
| Ms VJ Klein | Non-executive director |
| Ms C Mabude* | Non-executive director |
| Dr P Naidoo | Non-executive director |
| Mr A Singh | Chief Financial Officer (CFO) |

In attendance

Ms A van der Merwe **Board Secretary**

APOLOGIES

| | |
|----------------------|---|
| Mr G Leonardi | Non-executive director |
| Ms S Daniels | Group Company Secretary & Interim Head: Legal & Compliance ("GCS") |

*For part of the meeting

1. OPENING

1.1 Welcome

The Chairman welcomed everyone to the special meeting of the Board that had been called at short notice to discuss the matter concerning the early retirement of Mr Brian Molefe and the recent media statement released by the Minister of Public Enterprises.

1.2 Apologies and quorum

The apologies of Mr Leonardi and Ms Daniels were noted. It was confirmed that a quorum was present and the meeting was declared duly constituted.

2. DECLARATION OF INTERESTS

No specific declarations were made in respect of the matter on the agenda.

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3. MATTERS FOR APPROVAL

3.1 Group Chief Executive (GCE): Early retirement

The Chairman requested the Board Secretary to read from the note prepared by the GCS which served as a reminder of the previous discussions by the Board concerning the possible options following the public announcement by the Minister of Public Enterprises that she did not agree with the Board's decision regarding the early retirement of the GCE, Mr Brian Molefe, and that she had requested the Board to revisit the matter and to put forward a palatable pension proposal.

It was confirmed from the note that at a meeting with the Minister on 25 April 2017, the Minister had been informed that:

- Based on the relevant rules of the Eskom Pension and Provident Fund (EPPF) there was no alternative pension proposal in order for the GCE to retire early and should Eskom wish for the GCE to retire early, Eskom would have to pay for the pensionable service as per the rules of the EPPF.
- Eskom had paid the relevant amount to the EPPF in terms of the rules of the EPPF
- The Board was of the opinion that it had acted within the rules of the EPPF and Eskom's Memorandum of Incorporation and that its actions had been reasonable and rational considering all the factors and dynamics at the time.
- The office of the Minister had been kept abreast of developments at all material times.
- A number of options had been considered by the Board and, based on legal advice received, it was noted that the Board would have no option but to rescind its decision in November 2016 to accept the application for early retirement made by the GCE.
- In view of this, and in the interest of Eskom and all concerned, the preferred option would be a rescission of the previous decision to approve the early retirement application and for the GCE to return to his position within Eskom and the Board.

The meeting discussed the different options and it was agreed that, considering the legal risks associated with all options other than the rescission, the Board was of the view that the GCE should be engaged on the basis of a rescission of the Board's prior decision to accept his application for early retirement. It was furthermore agreed that Mr Khoza and Ms Klein would be mandated to engage Mr Molefe on behalf of the Board to obtain his consent to the Board's rescission of its earlier decision.

The meeting confirmed that considering that it did not have the support of its principal for the approval of the early retirement application and the fact that there were legal risks

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associated with all the other options, the proposed option would be a fair and clean solution in the interest of all concerned. A legal process would introduce substantial and extended uncertainty which was not in the interest of Eskom. Mr Khoza also pointed out that the Board had in fact not expected the application for early retirement and although it had been accepted, this was in fact a surprise as his sudden departure was not actually regarded as being in the interest of Eskom.

Ms Mabude joined the meeting.

Ms Klein provided a summary of the discussion to Ms Mabude, confirming that the Board was in support of the option of a rescission of the approval of the early retirement application.


It was confirmed that following the engagement with Mr Molefe and in the event of him being in agreement, then:

- the Minister of Public Enterprises would be informed accordingly;
- an appropriate media release would be prepared and circulated for input from Board members, including Mr Molefe; and
- a formal legal opinion addressing and confirming the appropriateness of this option would be prepared.

In the event of the GCE not being in agreement, the Board would be advised accordingly and would reconvene to discuss the way forward.

The Chairman requested Mr Khoza and Ms Klein to meet with Mr Molefe as soon as possible and to report back to the Board, via the Chairman, on the outcome of the discussions. It was agreed that the GCS would be requested to prepare a letter for Mr Molefe to sign, should he agree with the proposal. In the interim, the imminent meetings forming part of the recruitment process for a new GCE would be postponed until further notice. Ms Klein requested the CFO to convey the Board's decision to the GCS and to ensure, with the GCS, that all legal requirements to give effect to this decision were properly dealt with.

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It was again noted that considering the Minister's response to the matter, the Board had no option but to rescind its original decision to accept the early retirement application. The meeting requested Ms Klein and Mr Khoza to also brief the interim GCE, if necessary, following the engagement with Mr Molefe.

The meeting discussed the administrative and legal implications of the consensual rescission option. A member commented that the GCE had in fact not resigned but had applied for early retirement. The fact that the Board's decision to approve the application would now be rescinded would mean that the status quo would prevail. In response to a question from Ms Klein regarding the possible impact of this matter on the CIPC enquiry, the CFO confirmed that the GCS had submitted the necessary information to CIPC to confirm that the Board had been applying its mind to all material matters in fulfilling its fiduciary and statutory duties to Eskom.

IT WAS RESOLVED THAT:

- 3.1.1 the Board elects to rescind the decision to approve the application in November 2016 of the Group Chief Executive, Mr Molefe, for early retirement ("the application");
- 3.1.2 Mr Khoza and Ms Klein be and are hereby mandated on behalf of the Board to engage with Mr Molefe in an attempt to procure his return as Group Chief Executive of Eskom with immediate effect and to thereafter report to the Chairman on the outcome of the engagement at their earliest convenience;
- 3.1.3 in the event of Mr Molefe agreeing to return as Group Chief Executive of Eskom with immediate effect, the Minister of Public Enterprises be informed accordingly and all administrative, legal and public relations implications and requirements be appropriately addressed; and
- 3.1.4 in the event of Mr Molefe refusing to return as Group Chief Executive of Eskom with immediate effect the Board would enforce its rights following its decision to rescind its approval in respect of the application and would meet to discuss all implications of the processes (legal and other) that would have to follow.

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4. CLOSURE

The Chairman thanked the members for their participation and declared the meeting closed.

SIGNED BY THE CHAIRMAN AS AN ACCURATE RECORD OF THE PROCEEDINGS

CHAIRMAN

DATE

M.K
Bug

"ESK14"

REINSTATEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED

and

BRIAN MOLEFE

RM Eng M.c
Eng

1 PARTIES

- 1.1 The Parties to this Agreement are –
- 1.1.1 ESKOM HOLDINGS SOC LIMITED; and
- 1.1.2 BRIAN MOLEFE.

1.2 The Parties agree as set out below.

2 INTERPRETATION

In this Agreement –

- 2.1 "Agreement" means this reinstatement agreement;
- 2.2 "Eskom" means Eskom SOC Holdings Limited, a juristic body created by virtue of the Eskom Act, No. 40 of 1987, as amended from time to time, having its head office at Megawatt Park, Maxwell Drive, Sunninghill;
- 2.3 "Eskom Pension and Provident Fund" means a pension fund established by the Pension Funds Act, 24 of 1956 which came into operation on 1 January 1960 and was registered on 21 April 1988;
- 2.4 "Molefe" means Brian Molefe with identity number 6812285778006;
- 2.5 "Parties" means the parties to this Agreement;
- 2.6 "Principal Agreement" means the employment agreement signed between the Parties on 7 March 2016 relating to Molefe's appointment as Group Chief Executive of Eskom, a copy of which is annexed hereto marked annexure "A"; and
- 2.7 words and phrases defined in the Principal Agreement or in the annexures to the Principal Agreement will bear the same meanings hereto.

3 INTRODUCTION

- 3.1 The Parties entered into the Principal Agreement;
- 3.2 On 11 November 2016, Molefe applied for early retirement. A copy of Molefe's early retirement application is attached marked "B".
- 3.3 On 24 November 2016, Eskom issued a letter accepting Molefe's early retirement. A copy of the acceptance letter is attached marked "C" ("Retirement Agreement").

Handwritten signatures and initials:
M.K
B.M

3.4 The Board has elected to rescind the decision to approve Molife's application for early retirement.

3.5 The Parties accordingly agree as set out herein.

4 PRINCIPAL AGREEMENT

For the avoidance of doubt, the Principal Agreement shall continue on its terms.

5 RESUMPTION OF DUTIES

Molife shall resume his duties in terms of the Principal Agreement on 15 May 2017. Eskom shall take all administrative steps necessary to give effect to this Agreement.

6 REPAYMENT OF MONIES BY MOLIFE TO THE FUND

Molife agrees to pay to the Fund all amounts due to the Fund which were paid to him pursuant to the Retirement Agreement by no later than 30 November 2017.

7 PERIOD BETWEEN 1 JANUARY 2017 TO 15 MAY 2017

The period between 1 January 2017 and 15 May 2017 will be regarded as unpaid leave.

8 WHOLE AGREEMENT

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated herein shall be binding on the Parties.

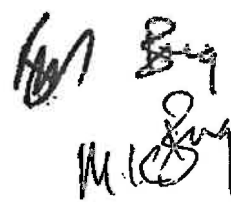
9 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

10 SIGNATURE

10.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

10.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.



10.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

10.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at *Summerville* on 11 May 2017.


For and on behalf of

EBKOM HOLDINGS SOC LIMITED



Signature
Dr BS Ngubane
Chairman

SIGNED at *Cape Town* on 11 May 2017.



Signature
Mr BM Mojola

M.K
[Handwritten signature]

"ESK15"



Mr Brian Molefe
ID 8612285778088

Dear Brian

YOUR EARLY RETIREMENT

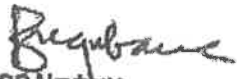
- 1 The above matter has reference.
- 2 With effect from 1 October 2016, you were appointed as Eskom Holdings SOC Limited's ("Eskom") Group Chief Executive.
- 3 An employment agreement was signed by the parties on 7 March 2016 ("the employment agreement").
- 4 On 11 November 2016, you requested the Eskom Board to approve your application for early retirement in terms of the Eskom Pension and Provident Fund Rules ("Rules") read in conjunction with People and Governance Committee resolution dated 9 February 2016. You further indicated that your last day of service would be 31 December 2016.
- 5 Eskom issued a letter accepting your application for early retirement on 24 November 2016 ("the Retirement Agreement").
- 6 The Board of Eskom has resolved to rescind the Retirement Agreement. Consequently, the Board tenders resumption of your duties as Group Chief Executive Officer by 15 May 2017, on the basis set out in the re-instatement agreement signed between us.

Head Office
Nobelenburg Park Memorial Drive Sunninghill Sandton
PO Box 10991 Johannesburg 2000 SA
Tel +27 11 800 2030 Fax +27 11 800 5908 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/01822790

M.K
Bing

7 --Should the terms of this proposal be acceptable to you, kindly sign a copy of this letter and return to the Company Secretary by close of business on the 12 May 2017.

Yours sincerely,

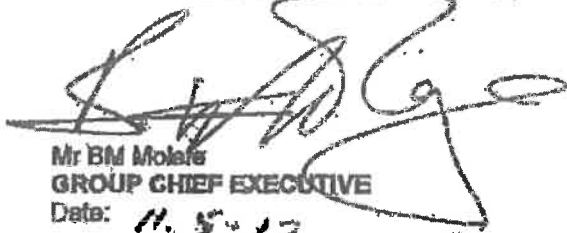


Dr BS Ngubane

CHAIRMAN

Date: 11/05/17

I ACCEPT THE TERMS OF THIS LETTER READ TOGETHER WITH MY EMPLOYMENT AGREEMENT SIGNED ON 7 MARCH 2016 AND THE REINSTATEMENT AGREEMENT SIGNED ON 12 MAY 2017.



Mr BM Molefe
GROUP CHIEF EXECUTIVE

Date: 11.5.17.

M.K
Bog

"ESK16"

STATEMENT

On Wednesday 2 November 2016, a report entitled 'State of Capture' prepared by the former Public Protector, Advocate Thuli Madonsela, was released.

The report did not make any findings. Instead it made what were termed "observations", based, (the report acknowledged), on an investigation not completed. It deferred a proper investigation to a commission of inquiry to be established at a future date. The outgoing Public Protector has directed the President – in whom the Constitution vests the power to appoint commissions of inquiry - to appoint one, and further directed the Chief Justice to designate a particular judge to head it.

It is a matter for regret that the report was prepared in haste to meet a deadline related to the Public Protector's own departure from office. That her office continues, as all State offices do, and that any uncompleted function is completed by a successor in that office, was not a consideration in the report.

"Observations" made in the report relating to, inter alia, my conduct, are in material respects inaccurate, based on part-facts or simply unfounded. What the previous Public Protector has done is not herself to investigate to completion, or to allow her office to complete what she initiated too late to complete herself. She has also determined on recording "observations" without, in crucial respects, putting intended harmful disclosures to me first – as she was by law required to do. She has effectively deferred my constitutional right to be heard to a future date, and to a further body, which she has ordered others to assemble.

If such a body is indeed by law to be assembled, and carry out the task, it will not be for some time – as recent experience indicates.

In the meanwhile harm is done – to the institution it has been my honour to lead in the most difficult times, to its reputation and to my own. I say nothing of the harm, too, to others close to me.

I am confident that, when the time comes, I will be able to show that I have done nothing wrong and that my name will be cleared. I shall dedicate myself to showing that an injustice has been done by the precipitate delivery of 'observations', following an incomplete

M. K.
Grey

investigation, which the former Public Protector has drawn back from calling 'findings'. The truth will out.

I have, in the interests of good corporate governance, decided to leave my employ at Eskom from 1 January 2017. I do so voluntarily: indeed, I wish to pay tribute to the unfailing support I have had since I took up office from the chairman, the Board and with those with whom it has been my privilege to work. Together we brought Eskom back from the brink.

I will take time off to reflect before I decide on my next career move.

I wish to reiterate that this act is not an admission of wrongdoing on my part. It is rather what I feel to be the correct thing to do in the interests of the company and good corporate governance.

I wish to thank the shareholder representative, Ms Lynn Brown, the board, the executive team and all Eskom employees for their hard work and guidance in steering the company out of very difficult times during the twenty months that I was privileged to be the Group Chief Executive.

I go now, because it is in the interests of Eskom and the public it serves, that I do so.

Brian MOLEFE
11 November 2016



"ESK17"

MEDIA STATEMENT

Eskom GCE Brian Molefe voluntarily steps down

Friday, 11 November 2016: It is with a great sense of loss and regret that the Board of Eskom announces a decision by Eskom Group Chief Executive Brian Molefe to step down in the interest of good corporate governance.

In an effort to clear his name following the release of former Public Protector Thuli Madonsela's report on her "observations" about the so-called state capture, Mr Molefe has decided to voluntarily step down to reflect and take time off.

Eskom Chairperson Baldwin Ngubane said the decision taken by Mr Molefe was regrettable but understandable.

Since joining Eskom in April 2015, Mr Molefe and his executive management team have turned around the company's operational and financial performance, with 15 months of no load shedding, the impact of which has been enjoyed by every South African citizen. The improved performance of the power generating units coupled with additional capacity from some of our new build projects has resulted in a stable power system, with excess capacity being exported to neighbouring states.

The company's liquidity position has also improved significantly, with liquid assets increasing by 81.6% from R24.1 billion a year ago, to R43.8 billion at 30 September 2016 in the face of CPI growth reported to be 5.1% as at 1 April 2016. The group has access to adequate resources and facilities to continue as a going concern for the foreseeable future.

The Eskom Board sincerely thanks Brian Molefe for his relentless dedication to turning Eskom around, solidifying a capable executive team and putting it on a sound growth trajectory.

Eskom will soon be announcing the interim leadership arrangements once agreed with our Shareholder Representative, the Honourable Minister Lynne Brown.

ENDS

Issued by: Eskom Media Desk
Tel: +27 11 800 3304/3343
Cell: +27 82 805 7278
Fax: 085 684 7699
Email: mediadesk@eskom.co.za

M:K
Bry

"EN072"

"SF4"



Eskom Pension And Provident
 Private Bag 50
 Bryanston



2021

Date: 2015/10/27
 Ref: ROTE / 43306

**RE RECOGNITION OF TRANSFER BETWEEN APPROVED FUNDS:
 POLICY NUMBER: 004610263**

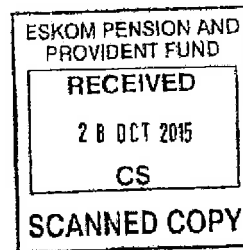
It is hereby confirmed that payment of the transfer amount was made as per the following banking details:

| | |
|---------------------|-------------------------|
| Bank: | Standard Bank Of Sa Ltd |
| Branch: | 051001 |
| Branch Description: | 051001 - Cape Town |
| Account Number: | 000000023395508 |
| Amount: | 4,264,575.34 |
| Date: | 2015/10/23 |
| EFT Number: | 00000314945-DC-EN |

Please complete page 3 of the document for recognition of transfer between approved funds and return the form to the Momentum Retirement Administrators.

Yours sincerely

Operations Manager
 Momentum Retirement Administrators (Pty) Ltd.
 for Transnet Retirement Fund





**RECOGNITION OF TRANSFER
BETWEEN APPROVED FUNDS**

GENERAL

In terms of the income tax act (Act 58 of 1962) lump sum benefits at withdrawal are exempted from lump sum tax:

- If they arise from an approved pension fund and are transferred to another approved pension fund / retirement annuity / fund; or
- If they arise from an approved provident fund and are transferred to another approved pension fund / provident fund / retirement annuity fund.

PARTICULARS OF MEMBER

Full first names and surname: **Brian Molefe**
Identity Number / Date of Birth: **6612285778086 / 1966/12/28**
Income tax reference no.: **0543140644**

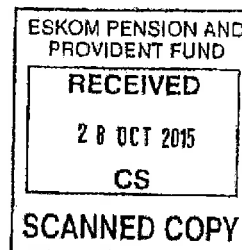
STATEMENT ON BEHALF OF TRANSFERRING FUND

I the undersigned declare on behalf of the Transnet Retirement Fund.
18/20/40/99999

1. That the transferring fund is an approved pension fund (established) by law, and
2. That the member enjoyed membership of the transferring fund until 2015/10/01
3. Pensionable service date in the Transnet Retirement Fund started on 2011/02/21
4. Portion of the benefit not transferred but paid to the member amounts to R. 0.00

Yours sincerely

Operations Manager
Momentum Retirement Administrators (Pty) Ltd.
for Transnet Retirement Fund



G

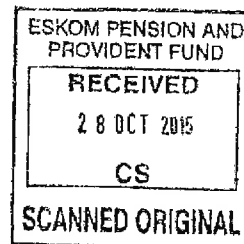
STATEMENT ON BEHALF OF RECEIVING FUND (ROTE) (43306)

I the undersigned declare on behalf of ESKOM Pension and Provident Fund.

1. That the receiving fund is an approved pension / provident / retirement ~~annuity~~ fund (Delete which is not applicable)
2. That R 4,264,575.34 received for application under the receiving fund on behalf of the member and
3. That the transfer was in accordance with the stipulations of the act as defined in par 1 above.

Signed at EPPF on this 27 day of October 20 15

Signed by Robert Machake Capacity Fund Accountant



"ENQ 73"

SFS"
B



Mr. B MOLEFE

2015/11/04

Contact Centre
☎ (011) 709-7492

Dear Mr. B MOLEFE

**SCHEME FOR THE PURCHASE OF ADDITIONAL PENSION BENEFITS
UNIQUE NUMBER: 4610263**

We acknowledge receipt of your money deposit amounting to R 4 264 575.34 which was added to your capital in the Additional Benefit Scheme. (Receipt number F2895, attached).

Yours sincerely

Joey Sankar

RETIREMENT FUND OPERATION MANAGER



B

Standard Bank of South Africa

The Standard Bank of South Africa Limited Registered Bank Reg. No. 1962/000738/06

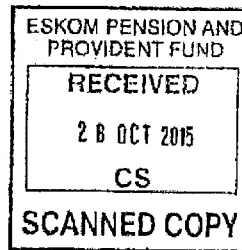
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CURRENT ACCOUNT - STATEMENT DETAILS


| | | | | | | |
|----------|---------------|----------------------|---------------|----------|------------------|---|
| Account: | 0030023395509 | ESKOM PENS & PROV-MA | Statement For | 20151026 | VAT Registration | 0 |
| Branch: | 609953 | FOURWAYS CROSSING | Statement No | 841 | | |

| Page | Details | Service Fee | Debit | Credit | Date | Balance |
|------|--------------------------------|-------------|---------------|---------------|----------|---------------|
| 1 | BALANCE BROUGHT FORWARD | 0.00 | 0.00 | 0.00 | 20151026 | 1,011,834.22 |
| 1 | CREDIT TRANSFER | 0.00 | 0.00 | 12,000,000.00 | 20151026 | 13,011,834.22 |
| 1 | TREASDI/366815 WITHDRAW | | | | | |
| 1 | MAGTAPE CREDIT | 0.00 | 0.00 | 614.20 | 20151026 | 13,012,448.42 |
| 1 | 001 UNPAID/SWEIERINGS NEDBANK | | | | | |
| 1 | MAGTAPE CREDIT | 0.00 | 0.00 | 4,264,575.34 | 20151026 | 17,277,023.76 |
| 1 | 00000314946-DC-EN | | | | | |
| 1 | CREDIT TRANSFER | 0.00 | 0.00 | 508,462.50 | 20151026 | 17,785,486.26 |
| 1 | DIVIDENDS INCOME | | | | | |
| 1 | CREDIT TRANSFER | 0.00 | 0.00 | 3,791,798.34 | 20151026 | 21,577,282.80 |
| 1 | AIF DBN NO.40 | | | | | |
| 1 | INTERBANK CREDIT TRANSFER | 0.00 | 0.00 | 203,407.05 | 20151026 | 21,780,689.85 |
| 1 | ESKOM PEN AND PR | | | | | |
| 1 | INTERBANK CREDIT TRANSFER | 0.00 | 0.00 | 5,046,628.45 | 20151026 | 27,827,318.30 |
| 1 | 00000314946 DC EN | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -3,688.00 | 0.00 | 20151026 | 27,823,630.30 |
| 1 | TIMES MEDIA GROUP GB302 15:35 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -1,881.00 | 0.00 | 20151026 | 27,821,749.30 |
| 1 | POST VISION TECHNO GB302 15:35 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -508,462.50 | 0.00 | 20151026 | 27,313,286.80 |
| 1 | ESKOM PPF ESKOM PPF CALL | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -362.95 | 0.00 | 20151026 | 27,312,923.85 |
| 1 | TELKOM SA LTD GB302 15:36 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -3,887.40 | 0.00 | 20151026 | 27,309,036.45 |
| 1 | NASHUA COMMUNICATI GB302 15:35 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -208,407.05 | 0.00 | 20151026 | 26,900,629.40 |
| 1 | ESKOM PPF ESKOM PPF REFUND PER | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -1,429.58 | 0.00 | 20151026 | 26,899,200.82 |
| 1 | SHRED-IT GB302 15:35 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -7,000,000.00 | 0.00 | 20151026 | 19,899,200.82 |
| 1 | ESKOM PENSION FUND GB302 15:36 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -2,565.61 | 0.00 | 20151026 | 19,896,635.21 |
| 1 | ADT SECURITY PTY L GB302 15:35 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -5,000,000.00 | 0.00 | 20151026 | 14,896,635.21 |
| 1 | ESKOM PENSION FUND GB302 15:36 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -2,493.18 | 0.00 | 20151026 | 14,894,142.03 |
| 1 | 8ASFOUR 2846 T/A F GB302 15:36 | | | | | |
| 1 | CATS THIRD PARTY PAYMENT | 0.00 | -774,090.42 | 0.00 | 20151026 | 14,120,051.61 |
| 1 | NKONKI INCORPORATE GB302 15:35 | | | | | |
| 2 | BALANCE BROUGHT FORWARD | 0.00 | 0.00 | 0.00 | 20151026 | 14,120,051.61 |
| 2 | CATS THIRD PARTY PAYMENT | 0.00 | -5,431.00 | 0.00 | 20151026 | 14,114,620.61 |
| 2 | TELKOM SA LTD GB302 15:36 | | | | | |
| 2 | CATS THIRD PARTY PAYMENT | 0.00 | -5,580.53 | 0.00 | 20151026 | 14,109,040.08 |
| 2 | NICHOLSON CORPORAT GB302 15:35 | | | | | |
| 2 | CATS THIRD PARTY PAYMENT | 0.00 | -15,980.00 | 0.00 | 20151026 | 14,093,060.08 |
| 2 | GLOBAL ASP TECHNOL GB302 15:36 | | | | | |
| 2 | CATS THIRD PARTY PAYMENT | 0.00 | -55,820.88 | 0.00 | 20151026 | 14,037,239.20 |
| 2 | NKONKI INC GB302 15:36 | | | | | |
| 2 | CATS THIRD PARTY PAYMENT | 0.00 | -735.65 | 0.00 | 20151026 | 14,036,503.55 |
| 2 | TELKOM SA LTD GB302 15:36 | | | | | |

** END OF REPORT **



6

| | | |
|--|--|--|
|  <p>Eskom Pension and Provident Fund</p> | <p>ESKOM PENSION AND PROVIDENT FUND RECEIVED</p> | <p>2895 10/2015</p> <p>RECEIVED from <u>PPHC 2015/10/26 CS</u> <u>2895</u> <u>MOMENTUM RETIREMENT SCANNED ORIGINAL FROM INVESTORS</u> the sum of <u>FOUR MILLION TWO HUNDRED AND SIXTY FOUR THOUSAND</u> <u>AND FIVE HUNDRED AND SEVENTY FIVE RAND & 34/100</u> in settlement of <u>B. MOLELE -> ID. 6612285778086</u></p> <p>Cost Centre <u>EP0001</u> Acc. No. <u>0003-1907</u> <u>AVC TRANSFER IN</u> <u>R H.264575.34</u></p> <p><i>[Signature]</i> ACCOUNTING MANAGER</p> |
|--|--|--|

MARKET & MORGAN TRUSTEES PTY LTD

6

"ENQ 74"

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"SF6"
(f)

| | | |
|--|--|------------------|
| | Application for Retirement Benefits | FORM 1 |
| | | Revision 05/2016 |
| | | Page 1 of 11 |

1. This original application form must be completed, signed and forwarded to the Eskom Pension and Provident Fund, Private Bag 50 Bryanston, 2021 two months prior to retirement, together with original certified copies of all relevant documents as listed in section K
2. Please initial each page and ensure that the pension number is written on each page.
3. Please complete this form in full. Incomplete forms cannot be processed
4. Please note that faxed copies will not be accepted by the Fund

CRMSH

COMPLETE THIS FORM IN FULL AND PROVIDE ALL THE DETAILS AND DOCUMENTS REQUESTED. FAILURE TO DO SO MAY LEAD TO DELAYS IN PROCESSING YOUR APPLICATION FOR BENEFITS

SECTION A - REASON FOR APPLICATION (Please mark with an "X")

| | | | |
|----------------------------------|--------------------------|--|-------------------------------------|
| Normal Retirement (Rule 23) | <input type="checkbox"/> | Early Retirement (penalties) (Rule 24) | <input type="checkbox"/> |
| Ill-Health Retirement (Rule 25) | <input type="checkbox"/> | Early Retirement (no penalties) no potential service (Rule 24) | <input type="checkbox"/> |
| Deferred Retirement Rule (18(7)) | <input type="checkbox"/> | Early Retirement (no penalties) with potential service (Rule 2B) | <input checked="" type="checkbox"/> |

Last day in service: 31 December 2016

SECTION B - PERSONAL DETAILS OF MEMBER

| | | | |
|---|---|--|--|
| Unique number | <u>4610263</u> | Pensioner Number | |
| Title | <u>Dr</u> | | |
| Full names (Not initials) | <u>BRIAN</u> | | |
| Surname | <u>MOLEFE</u> | | |
| Identity / Passport number | <u>6612285778086</u> | | |
| SA Revenue Services Office | <u>PRETORIA</u> | (Where Member submits his / her tax returns) | |
| SA Revenue Services tax no. | <u>0543140644</u> | (Your 10-digit tax reference number as reflected on the employer payroll) | |
| Marital status | <u>MARRIED</u> | Date of marriage / customary union | |
| Have you entered into more than one marriage union at a time? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | (If "Yes" please furnish details on a separate sheet) | |
| Or co habitation/Permanent Live-in Partner | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | (If "Yes" please furnish details on a separate sheet) | |
| Were you ever divorced? | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | Please attach certified copy of the Final Divorce Order (with all Annexures and Settlement Agreements) as signed by the relevant Clerk of the court to this form. Failure to do so may lead to delayed processing. | |
| If "Yes" date of divorce | <u>12</u> / <u>11</u> / <u>2010</u> | | |

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Unique number **4610263.**

SECTION C - CONTACT DETAILS OF MEMBER

Telephone number **012 6671885.** Fax number
 Cell phone number **083 555212-1.** E-mail address **mbm2@nwel.co.za**
 Would you like to receive future correspondence via e-mail? Yes No

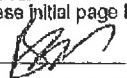
Postal address (after exit) Residential address (after exit)
P. O. Box 18 **409 KELLY BRAY LANE**
CORNWALL HILL **CORNWALL HILL ESTATE**
SOUTH AFRICA. (Country) **SOUTH AFRICA** (Country)
0178 (Postal/International code) **0178.** (Postal/International code)

Details of next of kin (not living with you)
 Name **AR. S.P. MOLEFE** Relationship **FATHER.**
 Telephone number **012 7031870** Cell phone number **072 9214819.**
 Postal address Residential address
2695 ZONE 2 **2695 ZONE 2**
GA-RANKUWA **GA-RANKUWA**
SOUTH AFRICA. (Country) **SOUTH AFRICA** (Country)
0208 (Postal code) **0208.** (Postal code)

SECTION D - COMMUTATION OF PENSION

What portion of your annual pension do you wish to convert into a lump sum?
 Please indicate your choice by marking only one of the following 4 options with an "X".

- A. Monthly Pension only
- B. One third
- C. Maximum tax free
- D. Other (State amount - less than option B)

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Unique number

461 0263.

SECTION E – PERSONAL BANKING DETAILS OF MEMBER (current salary)

Please Note: No payments will be made to third party accounts/spouses account

Full name of account holder

Brian Molefe

Name of bank

Standard Bank

Name of branch

Wealth + Investment Centurion

Branch code

012645

Account number

422 - 097 - 314

Account type

Cheque

(Cheque/Savings/ Transmission)

Please provide a bank letter on the bank's letterhead to confirm your banking details. If you wish to receive the benefit in a bank account outside South Africa, please complete the International Banking Form.

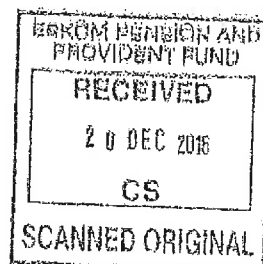


Member's signature

Brian Molefe

Date

08.12.2016.



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B

B

Application for Retirement Benefits

Unique number **4610263**

SECTION F - MEMBER'S DEPENDANTS

Full names (not initials) and surname (Spouse 1) **DIVORCED** Birth date Pension dependent
 Yes No

Identity number

| Full names (not initials) and surname of children (Spouse 1) | Relationship | Birth date | Pension dependent | |
|--|---------------------------|-------------------|---|-----------------------------|
| 1 ITUMALENG MOLEFE | ^{SON} SON | 01.11.1996 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2 ITUMALENG MOLEFE | DAUGHTER | 22.11.2000 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Full names (not initials) and surname (Spouse 2) **ARETHUR GAONTERALE MOLEFE** Birth date **07.07.1980** Pension dependent
 Yes No

Identity number **8607071669083**

| Full names (not initials) and surname of children (Spouse 2) | Relationship | Birth date | Pension dependent | |
|--|----------------------|-------------------|---|-----------------------------|
| 1 KEITUMETSE ZAMATUMUWA MOLEFE | STEP DAUGHTER | 06.09.07 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2 ONKOPOTSE WETSHOOTILE MOLEFE | SON | 01.07.2015 | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Full names (not initials) and surname (Spouse 3) Birth date Pension dependent
 Yes No

Identity number

| Full names (not initials) and surname of children (Spouse 3) | Relationship | Birth date | Pension dependent | |
|--|--------------|------------|------------------------------|-----------------------------|
| 1 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5 | | | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

NOTE: If there are more spouses or children born / legally adopted out of this marriage/s, please provide details on a separate sheet. FOR MEDICAL AID CONTINUATION/DEPENDENCY, PLEASE COMPLETE RELEVANT MEDICAL AID APPLICATION FORM.

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SECTION G (i) - DEDUCTIONS FROM MONTHLY PENSION

Private insurance (deductions will only be made where policy numbers and deduction amounts are provided)

| Insurance company | Policy number | Value per month |
|-------------------|---------------|-----------------|
| | | R |
| | | R |
| | | R |
| | | R |
| | | R |

SECTION G (ii) - TO BE COMPLETED BY HUMAN RESOURCES (Not applicable to deferred retirements)

Date of engagement (employer) **25/09/2015**
 Deemed start date (pension purposes) **25/09/2015**
 Final annual basic salary **468 930.00**

Should these two differ, service record cards must be attached.

Pensionable earnings/basic salary, including market premium and long service, during the last 12 (7.3%) or 36 (6%) months of service.

Service Outside Republic

Were any services rendered outside the Republic during the period of membership of the Fund?

| | |
|---|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| Total number of months services were rendered while contributing to Fund | |
| Total number of months services were rendered outside the Republic while contributing to Fund | |

| From | To | Salary & AH & LSI amounts |
|------------|------------|---------------------------|
| 25/09/2015 | 30/09/2015 | 69 330.00 |
| 01/10/2015 | 31/03/2016 | 446 600.00 |
| 01/04/2016 | 31/12/2016 | 468 930.00 |

SECTION G (iii) - DETAILS OF TAXABLE INCOME

Gross earnings for the previous FIVE tax years (IRP 5 totals)

| Year | Total |
|----------------|----------------------|
| 2015. | 7 656 000.00 |
| 2016 | 8 038 800.00 |
| | |
| | |
| | |
| Total | 15 694 800.00 |
| Average | 7 847 400.00 |

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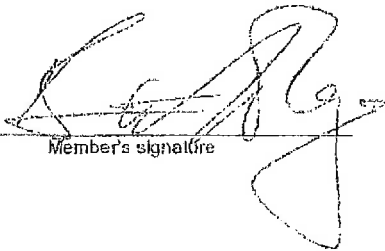
4610263.

SECTION H - DECLARATION BY MEMBER (A - J)

I, the undersigned, hereby certify that the information provided on this form, is correct and true. I acknowledge that I have read and understood the instructions, notes and information provided and that I understand the options available to me.

I agree that payment in accordance with my instructions will present a full discharge of the fund's liability to me.

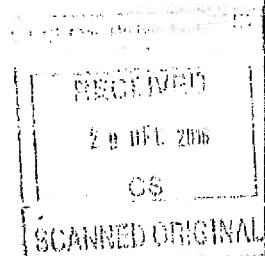
Signed at PRETORIA on this 07TH day of DEC 2016



Member's signature

Brian Molefe

Member's full names (please print)



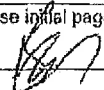
VERY IMPORTANT NOTE:

Evidence of Survival (EOS)

You will receive a yellow form from the EPPF annually (example attached) that you must complete in the presence of a Commissioner of Oaths.

This form, once completed by you, will confirm that you are still alive. Should the original form not be received by the EPPF on a date specified by the EPPF, payment of benefits and also deductions will be suspended. The EPPF will then not accept liability for cancellation of policies etc.

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Unique number **4610263.**

SECTION 1 - APPLICATION TO CONTINUE WITH MEDICAL AID

Full names (Not initials) **Brian Molefe**

Surname **MOLEFE**

Identity/Passport number **6612285778086**

Telephone number **012 6671885**

Fax number

Cell phone number **0835552101**

E-mail address **mbm1@mweb.co.za**

Marital status **MARRIED**

(Please attach copy of marriage certificate / divorce order)

Do you wish to continue with Medical Aid?
 Yes
 No

(If ticked "Yes" and doesn't qualify, practitioner must close out with employee.)

Managerial Levels do not qualify for post-retirement medical aid if appointed externally with effect from 1 June 2003.

***Once an employee has exited the medical aid, you will not be able to re-join as a subsidised member**

Please indicate the scheme you currently belong to:

Bonitas
 Discovery
 Sizwe
 Medihelp
 Bestmed
 Other Specify:

Medical aid option: **CLASSIC COMPREHENSIVE** Medical aid number: **136547515**

Number of active dependants currently registered on medical aid: **7 (seven)**
SEE ATTACHMENT

| Name and surname of dependant | Dependant's date of birth | Relationship to main member |
|-------------------------------|---------------------------|-----------------------------|
| | | |
| | | |
| | | |
| | | |

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Do you wish to keep all dependants on the medical aid? Yes No

If you wish to remove any dependant, please supply full details of the dependant:

| Name and surname | Date of birth | Relationship | Termination date |
|------------------|---------------|--------------|------------------|
| | | | |
| | | | |
| | | | |
| | | | |

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For verification purposes, please attach a copy of the medical aid membership certificate

Managerial Levels (MPSE) only: Do you wish to continue with your supplementary Medical Expenses Top-up Insurance Policy (ESCAP) membership? Yes No

FOR OFFICE USE ONLY:
 HRSS Please confirm if the employee qualifies for Post-retirement Medical Aid per Eskom COS. Yes No Please initial page here **[Signature]**

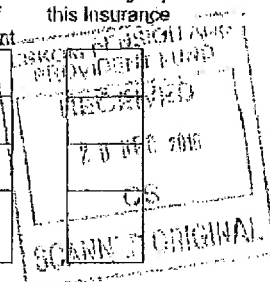
Unique number **4610263**

SECTION J - INSURANCE NOTIFICATION

NOTIFICATION OF RETIREMENT OF AN ESKOM EMPLOYEE

| | | |
|---------------------------|----------------------|----------------------|
| Title | | |
| Full names (Not initials) | | |
| Surname | | |
| Identity/Passport number | | |
| Date of retirement | | |
| Telephone number | | Fax number |
| Cell phone number | | E-mail address |
| Postal address | Residential address | |
| | | |
| | | |
| | | |
| | (Country) | (Country) |
| | (Postal code) | (Postal code) |
| | (International code) | (International code) |

| | Not applicable | Please continue with existing policy | Please cancel from date of retirement | I would like to take out (join) this insurance |
|--|--------------------------|--------------------------------------|---------------------------------------|--|
| INDWE - Electrosure policy (Contents of house, car, etc) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| INDWE - Voluntary Group Accident Insurance (VGA) (Personal Accident Cover) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| INDWE - Home owners (Fire, storm and tempest) insurance (Other than EFC Loan) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| SanlamSky Voluntary Burial Scheme (Please complete nomination form if you elect to continue; obtainable from Eskom HR) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



Do you wish to continue with the Group Life Insurance Scheme (MPSE)? Yes No

If yes please obtain a quotation from employeebenefits@eskom.co.za. The deduction will be made from your private banking account

PLEASE NOTE: If you require a new policy or to change an existing policy, please contact your insurer for assistance. I hereby authorise the insurer to carry out the above instructions.

Member's signature _____

Date _____

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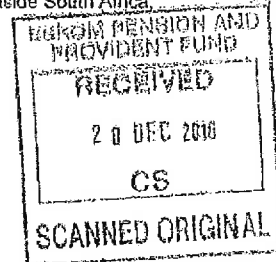
Unique number **4610263**

SECTION K – DECLARATION BY SHARED SERVICES HUMAN RESOURCES
Checklist of documents which must accompany this application.
(Regrettably this claim cannot be considered if any of the required documents are not attached.)

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Written authorisation from HR or BU to confirm approved retirement (Not applicable to deferred members) |
| <input checked="" type="checkbox"/> | HR confirmation of bank account details (SAP screen dump of account where salary was paid into. Not applicable to deferred members) |
| <input checked="" type="checkbox"/> | Bank account confirmation letter |
| <input checked="" type="checkbox"/> | Original certified copy of member and spouse/s identity document/ Smart Card ID/ Passport. |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | Original certified copies of marriage certificate/s or certificate/s of customary union. |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | Original certified copies of birth certificates, adoption papers or identity documents of children. |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | Original certified copies of divorce orders and settlement agreements |
| <input checked="" type="checkbox"/> | Proof of medical aid membership certificate |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | Passport photograph for pensioner card (main pensioner only). |
| <input checked="" type="checkbox"/> | Eskom compulsory death benefit nomination form |
| <input checked="" type="checkbox"/> | Eskom voluntary death benefit nomination form |
| <input checked="" type="checkbox"/> | Proof of tax reference number (compulsory) |

In case of a bank account change (if the bank account is not the one where the member's last salary was deposited into)

| | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Affidavit from member to inform the EPPF of reason for bank account change |
| <input checked="" type="checkbox"/> | Original certified copy of application form to bank to open a new account -- signed by Bank Manager |
| <input checked="" type="checkbox"/> | Original certified copy of member's identity document/ Smart Card ID/ Passport |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | Bank confirmation letter |
| <input checked="" type="checkbox"/> | N/A |
| <input checked="" type="checkbox"/> | In the case of a member deciding to receive their benefit in a bank account outside South Africa complete and attach the International Banking Form. |



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Unique number 4610263

SECTION K continued – DECLARATION BY SHARED SERVICES HUMAN RESOURCES
Checklist of documents which must accompany this application.
(Regrettably this claim cannot be considered if any of the required documents are not attached.)

I, the undersigned Human Resources Administrator, hereby certify that I have


- Verified information supplied on this form
- Verified that all documents required are attached
- Explained all the available options to the member

Please ensure that you sign this form. Failure to do so will lead to delays in processing the claim.

Human Resources Administrator's name Merinda Botha
E-mail address merinda.botha@eskom.co.za
Telephone number 011 800 4645
Signature M Botha
Date 19/12/2016

Checked by Shared Services HR Supervisor:
Name _____
E-mail address _____
Telephone number _____
Signature _____
Date _____

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29
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**SHARED SERVICES
HUMAN RESOURCES**
P O BOX 2634
SUNNINGHILL 2157


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"ENO 75"
 "SF9"
 "I"

Standard Bank of South Africa

The Standard Bank of South Africa Limited Registered Bank Reg. No. 1962/000738/06

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CURRENT ACCOUNT - STATEMENT DETAILS

| | | | | | | |
|---------|---------------|----------------------|---------------|----------|------------------|---|
| Account | 0000023395508 | ESKOM PENS & PROV-MA | Statement For | 20170323 | VAT Registration | 0 |
| Branch | 009853 | FOURWAYS CROSSING | Statement No | 085 | | |

| Page | Details | Service Fee | Debit | Credit | Date | Balance |
|------|--|-------------|----------------|----------------|---------------|----------------|
| 1 | BALANCE BROUGHT FORWARD | 0.00 | | 0.00 | 0.00 20170323 | 337,620.82 |
| 1 | CREDIT TRANSFER Dividend Settlement | 0.00 | | 3,211,387.70 | 20170323 | 3,548,908.62 |
| 1 | INTERBANK CREDIT TRANSFER NEDS 037881094451 000005 | 0.00 | | 11,267,167.38 | 20170323 | 14,816,055.88 |
| 1 | INTERBANK CREDIT TRANSFER NEDS 037881534630 000041 | 0.00 | | 11,300,000.00 | 20170323 | 26,116,055.88 |
| 1 | INTERBANK CREDIT TRANSFER 2600452966MESKOM HOL | 0.00 | | 30,106,915.62 | 20170323 | 66,222,981.50 |
| 1 | INTERBANK CREDIT TRANSFER NEDS 037881088272 000004 | 0.00 | | 40,000,000.00 | 20170323 | 86,222,981.50 |
| 1 | INTERBANK CREDIT TRANSFER SETTLEMENT | 0.00 | | 119,271,124.00 | 20170323 | 215,494,105.50 |
| 1 | CATS THIRD PARTY PAYMENT TRANSACTION CAPITA GB302 15:18 | 0.00 | -21,619.76 | | 0.00 20170323 | 215,472,485.74 |
| 1 | CATS THIRD PARTY PAYMENT ESKOM PPF ESKOM PPF CALL | 0.00 | -79,635,562.00 | | 0.00 20170323 | 135,838,923.74 |
| 1 | CATS THIRD PARTY PAYMENT MEDIA ADVERTS ADO GB302 15:10 | 0.00 | -21,580.20 | | 0.00 20170323 | 135,815,343.54 |
| 1 | CATS THIRD PARTY PAYMENT ESKOM PPF ESKOM PPF CALL | 0.00 | -3,211,387.70 | | 0.00 20170323 | 182,803,955.84 |
| 1 | CATS THIRD PARTY PAYMENT SALARY/WAGE | 0.00 | -3,120,330.00 | | 0.00 20170323 | 129,483,625.84 |
| 1 | CATS THIRD PARTY PAYMENT ESKOM PPF DIVIDEND SETTLEMENT | 0.00 | -11,267,167.38 | | 0.00 20170323 | 118,216,468.48 |
| 1 | CATS THIRD PARTY PAYMENT HOME AFFAIRS DEPOS GB302 15:10 | 0.00 | -6,729.79 | | 0.00 20170323 | 118,209,738.69 |
| 1 | CATS THIRD PARTY PAYMENT RAPTOR PRINT GB302 15:16 | 0.00 | -5,300.80 | | 0.00 20170323 | 118,204,438.09 |
| 1 | CATS THIRD PARTY PAYMENT ESKOM PPF ESKOM PPF CALL | 0.00 | -79,635,562.00 | | 0.00 20170323 | 38,568,876.09 |
| 1 | CATS THIRD PARTY PAYMENT MODISA LODGE GB302 15:10 | 0.00 | -23,940.00 | | 0.00 20170323 | 38,544,936.09 |
| 1 | CATS THIRD PARTY PAYMENT REGENT BUSINESS SC GB302 15:10 | 0.00 | -30,481.25 | | 0.00 20170323 | 38,514,454.84 |
| 1 | CATS THIRD PARTY PAYMENT T-SYSTEMS SA PTY L GB302 15:16 | 0.00 | -30,807.48 | | 0.00 20170323 | 38,483,647.38 |
| 1 | CATS THIRD PARTY PAYMENT ESKOM PENSION FUND GB302 15:09 | 0.00 | -8,000,000.00 | | 0.00 20170323 | 30,483,647.38 |
| 2 | BALANCE BROUGHT FORWARD | 0.00 | | 0.00 | 0.00 20170323 | 30,483,647.38 |
| 2 | CATS THIRD PARTY PAYMENT NICHOLSON CORPORAT GB302 15:10 | 0.00 | -2,270.54 | | 0.00 20170323 | 30,481,276.84 |
| 2 | CATS THIRD PARTY PAYMENT NEO TECHNOLOGIES GB302 15:16 | 0.00 | -32,484.30 | | 0.00 20170323 | 30,448,792.54 |

** END OF REPORT **

65



Pension and Provident Fund

EARLY RETIREMENT COSTS FOR DECEMBER 2017

FAX TO: 086 663 0313

ATTENTION: LULAMA KHANYILE
Gestesh.Hira@eskom.co.za
JoubertPJ@eskom.co.za
AndrewLC@eskom.co.za
PillayDK@eskom.co.za

CC EMAIL TO: (MANAGER)

| UNIQ No | NAME | DATE | PAY CENTRE | COSTS | ADMIN | TOTAL RECOVERABLE |
|---------|-----------|------------|------------|----------------------|-----------------|----------------------|
| 4610263 | B. MOLEFE | 31/12/2016 | 602A61 | 30 103 915.62 | 3 000.00 | 30 106 915.62 |
| | | | | 30 103 915.62 | 3 000.00 | 30 106 915.62 |

TOTAL DUE BY Eskom

PREPARED BY: T. Maja

SUPPORTED BY: B. Pitsa

AUTHORISED BY: [Signature]

DATE: 12/12/2017

Banking Details
 Bank Name: Standard Bank
 Account Number: 023395508
 Branch Code: 009953

"END 76"
 "SFG"
 (I)

5

"ENQ 77"

"SF II"

1

Lebo Makgate

From: Solly Ntsibande <solly@epf.co.za>
Sent: 05 May 2017 02:18 PM
To: Suzanne Daniels
Cc: Sbu Luthuli; Joey Sankar; Maseapo Kganedi; Anton Minnaar; Diego Vitale
Subject: FW: BM Molefe - 004610263
Sensitivity: Confidential

Good day Suzanne,

Trust that you are well and with reference to the e-mail below from you and the questions raised,

- 1) Please find the schedule below indicating the nature of the pension payments as well as the amounts that have been made to Dr Molefe thus far.

| <u>Pension Type</u> | <u>Gross</u> | <u>Less Deductions</u> | <u>Nett Amount Paid</u> | <u>Action date to bank</u> |
|--|---------------|------------------------|-------------------------|--------------------------------|
| Lump sum commutation | R9 767 743.68 | R1 974 975.77 | R7 792 767.91 | 01 st Feb 2017 |
| Monthly Pension Arrears Jan and Feb 2017 | R223 732.34 | R99 503.39 | R124 228.95 | 09 th February 2017 |
| Monthly Pension 01 March 2017 | R111 866.17 | R52 061.50 | R59 804.67 | 28 th February 2017 |
| Monthly Pension 01 April 2017 | R111 866.17 | R48 162.50 | R63 703.67 | 31 st March 2017 |
| Monthly Pension 01 May 2017 | R111 866.17 | R37 961.10 | R73 905.07 | 28 th April 2017 |

- 2) The Fund under normal practices does not reverse claims as the member would have elected his exit type and this would also be ratified by the employer. This serves as the nature of the application form received together with any associated approval.

In the event of the employer in conjunction with the member request a reversal of the exit type, the Fund could give consideration upon the written agreement between the member and the employer. However it must be carefully noted that the following potential implications and associated costs would have to be considered by the member as well as the employer.

- The cancellation of the tax directive applied for with SARS and reversal thereof on the lump sum portion as well as PAYE deducted from the monthly pension paid each month.
- Medical Aid deductions that were deducted from the gross pension paid each month
- The Eskom Compulsory Death Benefit Fund, member deduction and subsidy by the employer.
- Early retirement cost re-imburement

"ENQ 78"

"SF3"
"G"
3

REINSTATEMENT AGREEMENT

between

ESKOM HOLDINGS SOC LIMITED

and

BRIAN MOLEFE

~~Ⓢ~~
RM Aug

Ⓢ

15/07/16

1 PARTIES

1.1 The Parties to this Agreement are –

1.1.1 ESKOM HOLDINGS SOC LIMITED; and

1.1.2 BRIAN MOLEFE.

1.2 The Parties agree as set out below.

2 INTERPRETATION

In this Agreement –

2.1 "Agreement" means this reinstatement agreement;

2.2 "Eskom" means Eskom SOC Holdings Limited, a juristic body created by virtue of the Eskom Act, No. 40 of 1987, as amended from time to time, having its head office at Megawatt Park, Maxwell Drive, Sunninghill;

2.3 "Eskom Pension and Provident Fund" means a pension fund established by the Pension Funds Act, 24 of 1956 which came into operation on 1 January 1950 and was registered on 21 April 1958;

2.4 "Molefe" means Brian Molefe with identity number 6612285778086;

2.5 "Parties" means the parties to this Agreement;

2.6 "Principal Agreement" means the employment agreement signed between the Parties on 7 March 2016 relating to Molefe's appointment as Group Chief Executive of Eskom, a copy of which is annexed hereto marked annexure "A"; and

2.7 words and phrases defined in the Principal Agreement or in the annexures to the Principal Agreement will bear the same meanings herein.

3 INTRODUCTION

3.1 The Parties entered into the Principal Agreement;

3.2 On 11 November 2016, Molefe applied for early retirement. A copy of Molefe's early retirement application is attached marked "B".

3.3 On 24 November 2016, Eskom issued a letter accepting Molefe's early retirement. A copy of the acceptance letter is attached marked "C" ("Retirement Agreement").



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3.4 The Board has elected to rescind the decision to approve Molefe's application for early retirement.

3.5 The Parties accordingly agree as set out herein.

4 PRINCIPAL AGREEMENT

For the avoidance of doubt, the Principal Agreement shall continue on its terms.

5 RESUMPTION OF DUTIES

Molefe shall resume his duties in terms of the Principle Agreement on 15 May 2017. Eskom shall take all administrative steps necessary to give effect to this Agreement.

6 REPAYMENT OF MONIES BY MOLEFE TO THE FUND

Molefe agrees to pay to the Fund all amounts due to the Fund which were paid to him pursuant to the Retirement Agreement by no later than 30 November 2017.

7 PERIOD BETWEEN 1 JANUARY 2017 TO 15 MAY 2017

The period between 1 January 2017 and 15 May 2017 will be regarded as unpaid leave.

8 WHOLE AGREEMENT

This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated herein shall be binding on the Parties.

9 COSTS

Each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

10 SIGNATURE

10.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

10.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.



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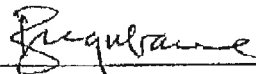
"6"

- 10.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.
- 10.4 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at *Summerville* on 11 May 2017.

For and on behalf of

ESKOM HOLDINGS SOC LIMITED



Signature
Dr BS Ngubane
Chairman

SIGNED at *Cape Town* on 11 May 2017.



Signature
Mr BM Molefe




B

"ENQ 19"

"SF12"

203

"ESK5"

| | | | |
|---|---|---------------------------------|-----------|
|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

**MINUTES OF THE BOARD PEOPLE & GOVERNANCE IN-COMMITTEE MEETING 07-2015/16
HELD ON TUESDAY 9 FEBRUARY 2016 IN THE HUVO NKULU BOARD ROOM, EXECUTIVE
FLOOR, MEGAWATT PARK**

STRICTLY CONFIDENTIAL

PRESENT

Members

- | | |
|----------------|-------------------------------|
| Ma V Klein | Chairperson |
| Ma N Carrim | Member |
| Mr B Molafe | Group Chief Executive ("GCE") |
| Dr B S Ngubane | Member |
| Mr Z Khoza | Member |
| Ms C Mabude | Member |

Officials

- | | |
|--------------|---------------------------|
| Mr A Minnaar | Executive Support Manager |
| Ms S Daniels | Company Secretary |

APOLOGIES

- | | |
|---------------|--------|
| Mr L Giovanni | Member |
|---------------|--------|

1. OPENING AND WELCOME

The Chairperson opened the meeting and welcomed all those present.

2. APOLOGIES

Apologies as above were noted.

3. QUORUM

A quorum being present, the Chairperson declared the meeting duly constituted.


4. DECLARATION OF INTERESTS

There were no declarations pertaining to items on the agenda and a declaration of interest register was circulated for signature.

J.

M-K
Gay
Mush

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| | | | |
|---|---|---------------------------------|-----------|
|  | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CCGTE |
| | | Revision | 0 |
| | | Effective Date | July 2015 |
| | | Office of the Company Secretary | |

RESOLVED THAT:

7.4.1 the alignment of the Board fee structure between that of Eskom and Transnet be recommended to the Minister of Department of Public Enterprises for approval.

The Chairperson noted the significant efforts of the Board Chairman to date to correct the misaligned Board fee structure.

7.5 Group Chief Executive: Conclusion of contract

Mr Minnaar reminded the meeting that the Minister had requested that the contract be concluded for a 5 year period and that she had also requested to have oversight over the contract. In addition, Eskom was given until the end of January 2015 to conclude the matter. A letter had however been addressed to the Minister regarding the retirement of the GCE and a response was awaited.


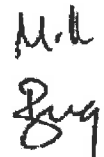

Mr Minnaar noted that a fixed term contract of 5 years at this level was a first for Eskom and was also not aligned with best practice. He explained the negative impact of this on the retirement benefits of the relevant individuals (GCE and CFO) and proposed that approval be granted for remedial action based on past practices and precedents in Eskom to counter this impact, which could include additional pensionable service being granted and/or penalties being waived. Mr Minnaar quoted a number of examples where this had been done in Eskom in the past.

Mr Minnaar thereafter spelled out the required resolution noting the current rule that staff over 50 years of age with at least 10 years' service were entitled to retire as per the Eskom Pension and Provident Fund rules. The request was for the Eskom rules to be amended in respect of executive directors with fixed term contracts to make up the shortfall in years, waive the penalties and refund to the Pension and Provident Fund the actual cost relating to the additional service. He explained that refunding the cost would not reflect as emoluments of the executive director in question as this would constitute a transaction between Eskom and the Fund only with no money being paid to the individual.


The Chairperson summarised her understanding of the proposal as far as it would relate to the GCE. In respect of the CFO, the matter would be more complicated as he would not be 50 years of age at the time that the fixed term contract came to an end. The meeting enquired whether a proposal could be considered for the CFO and tabled for consideration in due course.

RESOLVED THAT:

7.5.1 the current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable;




 M. Minnaar

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| | | | |
|---|---|---------------------------------|-----------|
|  Eskom | ESKOM HOLDINGS SOC LTD BOARD PEOPLE & GOVERNANCE COMMITTEE: IN-COMMITTEE | Unique Identifier | 221-209 |
| | | Document Type | CGGTE |
| | | Revision | 0 |
| | | Effective Date | July 2016 |
| | | Office of the Company Secretary | |

7.5.2 In cases where an Executive Director (appointed on a fixed term contract) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:

- i. bridge the gap to make up for the 10 years;
- ii. waive penalties applicable to early retirement; and
- iii. refund EPPF actual costs for additional service added, plus penalties applicable to early retirement; and

7.5.3 a proposal in respect of the Chief Financial Officer to be considered and submitted to the Committee in due course.

8. CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

8.1 Minutes of the Previous Meeting Reference Document 5.1(a)

The minutes of the In-Committee meeting No. 08-2015/16 held on 22 October 2015, having been circulated, were considered. The Chairperson requested that the minutes be carefully reviewed to ensure correctness. She noted, for example, an error in the minutes that needed to be corrected. The Company Secretary confirmed that the wording of the relevant item would be revised accordingly. The Chairperson furthermore noted that discussions around the travel policy and appointment of non-executive directors on the board of subsidiary companies had been discussed. The Company Secretary was requested to consider the matter based on the provisions of the Eskom Memorandum of Incorporation.

RESOLVED THAT:

- 8.1.1 the minutes of the People and Governance Committee In-Committee meeting No. 08-2015/16 held on 22 October 2015 be approved as an accurate reflection of the proceedings, subject to the proposed amendments; and
- 8.1.2 the Chairperson of this meeting be duly authorised to sign the minutes.

9. MATTERS ARISING FROM PREVIOUS MINUTES

9.1 Matters arising Reference Document 6.1(a)

The Action List as included in the meeting papers was NOTED.

10. GENERAL

There were no further matters for discussion.

J.

M.K
M.K.

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"ESK 6"

RESOLUTION

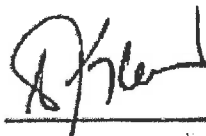
AT ITS MEETING ON 9 FEBRUARY 2016, THE PEOPLE AND GOVERNANCE COMMITTEE OF THE ESKOM BOARD RESOLVED THE FOLLOWING:

1. The current Eskom Pension and Provident Fund (EPPF) rule that Employees may proceed on retirement from age 50 with 10 years' service, remains applicable.
2. In cases where Executive Director's (appointed on fixed term contracts) decide to take early retirement and there is a shortfall regarding the EPPF 10 years' service rule, Eskom shall:
 - I. Bridge the gap to make up for the 10 years'
 - II. Waive penalties applicable to early retirement
 - III. Refund EPPF actual costs for additional service added, plus penalties applicable to early retirement



Dr B S Ngubane

CHAIRMAN: ESKOM



Ms V J Kein

CHAIRPERSON: PEOPLE AND GOVERNANCE COMMITTEE

~

J.

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Grey
Mush.

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